

# Town of Milford Meeting Notice

2020 SEP 10 AM 10:07

**Board or Commission: Conservation Commission**

**Date and Time of Meeting: Wednesday September 16, 2020 at 7.00 P. M**

*Place of Meeting—Pursuant to Governor Baker's March 12, 2020 order suspending certain provisions of the Open Meeting Law, G.L. c. 30A sec. 18, and the Governor's March 15, 2020 Order concerning imposition of strict limitations on the number of people that may gather in one place, this meeting is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings as provided for in the Order.*

## PUBLIC HEARINGS

The Public Hearing Remote Participation call-in telephone number is 1-857-444-0744, with the conference code 143644. All testimony at a public hearing, including documents or exhibits, must be in connection with the matter being considered, and confined to the matter at hand, and will be limited to five minutes to allow for the opportunity for others to participate.

### **7.00 PM: General Business**

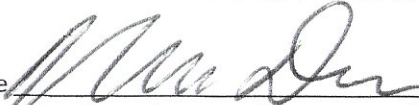
Review & Approve minutes

1. Request for Certificate of Compliance DEP#223-526 154 East Main St. Kevin Meehan
2. Request for Certificate of Compliance DEP#223-1170 12 Gordon Drive D & F Afonso Builders
3. Request for Certificate of Compliance DEP#223-818 49 Sumner St. Benjamin Moore
4. Request for Certificate of Compliance DEP#223-1122 4 Popia Court Snowflake LLC
5. Request for Certificate of Compliance DEP#223-1162 1 National St. Milford National LLC

### **Public Hearings**

6. Request for Determination of Applicability- 1 Ivy Lane Grace Lavallo
7. Notice of Intent DEP# 14 Prospect St Milford Regional Medical Center
8. Notice of Intent DEP# 223-1177 65 Field Pond Rd Sanylah Crossing Miraj Ahmed
9. Notice of Intent DEP#223-1178 Birch St Lobisser Building Corp.
10. Request for Determination of Applicability-Beaver St. Lots 25, 23C, 23B Rte 85 Realty Corporation
11. Notice of Intent DEP#223-1176 23 Gordon Drive D&F Afonso Builders

Signature



Dated

9/10/2020

The listing of matters above are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

## **Agenda Item # 1**



OFFICE OF PLANNING  
AND ENGINEERING

## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757  
508-634-2317 Fax 508-473-2394  
mdean@townofmilford.com

Michael Dean, P.E.  
*Town Engineer*

### M E M O R A N D U M

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TO: Mr. Michael Giampietro, Chairman – Conservation Commission  
FROM: Michael Dean, P.E. *MD*  
DATE: September 11, 2020  
SUBJECT: **158 East Main Street (formerly #154) – Kevin Meehan – Hyundai Dealership  
Request for Certificate of Compliance – DEP File # 223-526**

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The Request for a Certificate of Compliance, DEP File #223-526 is for work associated with wetland modifications, grading, installation of a fence and a small area of paving that took place in 1996. The work was completed many years ago and subsequent filings / site improvements have taken place. This request is to clear title of an old order of conditions.

1. A stamped as-built plan with the proper certifications is required per the order of conditions and should be provided.

The above item should be addressed prior to the issuance of a certificate of compliance.



# Guerriere & Halnon, Inc.

ENGINEERS & LANDSCAPE ARCHITECTS

[www.guerriereandhalnon.com](http://www.guerriereandhalnon.com)

Milford Office  
333 West Street, P. O. Box 235  
Milford, MA 01757-0235  
(508) 473-6630/Fax (508) 473-8243

Franklin Office  
55 West Central Street  
Franklin, MA 02038-2101  
(508) 528-3221/Fax (508) 528-7921

Whitinsville Office  
1029 Providence Road  
Whitinsville, MA 01588-2121  
(508) 234-6834/Fax (508) 234-6723

August 14, 2020

Milford Conservation Commission  
Town Hall – 52 Main Street  
Milford, MA 01757

RE: Kevin Meehan  
158 East Main Street  
DEP File # 223-526

Dear Commission Member;

On behalf of the applicant, Kevin Meehan, 154 East Main Street, Milford MA, we are requesting a Certificate of Compliance for the work permitted by the Order of Conditions issued June 19, 1996. The D.E.P. File Number is 223-526 and it was recorded in Book 18078 Page 73.

The permitted work allowed for the construction of a fence along the wetlands line and allowed the area within the fence to be paved. The proposed work was completed shortly after the order was issued, and the area has remained undisturbed for all this time. This is the same area that the applicant recently received permission to construct a new building for auto reconditioning.

The work was completed but the order has lapsed. Should there be any questions, please do not hesitate to contact us.

Sincerely,

Robert J. Poxon  
Project Engineer

## **Agenda Item # 2**



## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757

508-634-2317 Fax 508-473-2394

mdean@townofmilford.com

OFFICE OF PLANNING  
AND ENGINEERING

Michael Dean, P.E.  
*Town Engineer*

### M E M O R A N D U M

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TO: Michael Giampietro, Chairman – Conservation Commission  
FROM: Michael Dean, P.E. *MD*  
DATE: September 10, 2020  
SUBJECT: 12 Gordon Drive (Lot 5) - Request for a Certificate of Compliance  
DEP File # 223-1170

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The following information is in reference to a Request for a Certificate of Compliance for 12 Gordon Drive (Lot 5). The Applicant is F&D Central Realty Corporation, 189 Main Street, Milford, MA 01757.

The plan does not show that there have been any wetland pins (iron rods with caps) set at the edge of the wetlands / flag locations.

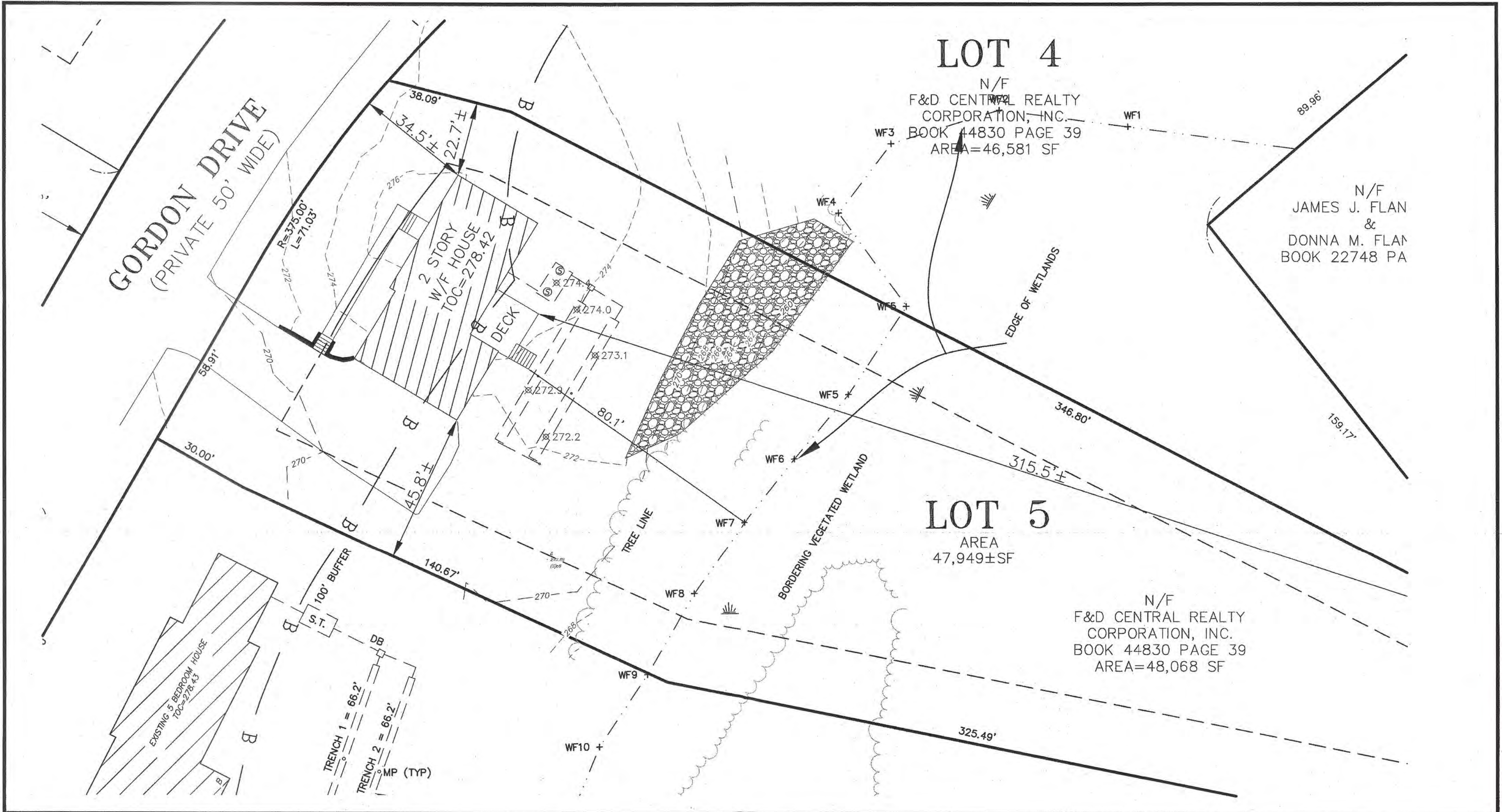
Following a site inspection and reviewing the submitted documents I recommend that the wetland pins be set prior to the issuance of a Certificate of Compliance.











I CERTIFY THE PROJECT HAS BEEN COMPLETED IN SUBSTANTIAL COMPLIANCE WITH THE PLANS AND CONDITIONS SET FORTH IN THE ORDER OF CONDITIONS FOR DEP FILE NO. 223-1170.



*[Signature]*  
 DATE: 8-12-20

|  |         |                   |
|--|---------|-------------------|
| OWNER  |         |                   |
| F&D CENTRAL REALTY CORP. INC.<br>189 MAIN STREET, MILFORD MA |         |                   |
| 00   | 8/11/20 | INITIAL SUBMITTAL |
|  |         | THL               |
|  |         |                   |
|  |         |                   |

AS-BUILT  
 PLAN OF LAND  
**12 GORDON DRIVE**  
 IN  
**MILFORD, MA**  
 SCALE: 20 FEET TO AN INCH  
 DATE: AUGUST 11, 2020

**Guerriere & Halnon, Inc.**  
 ENGINEERING & LAND SURVEYING  
 333 WEST STREET PH. (508) 473-6630  
 MILFORD, MA 01757 FX. (508) 473-8243  
 www.gandhengineering.com

### **Agenda Item #3**



OFFICE OF PLANNING  
AND ENGINEERING

## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757  
508-634-2317 Fax 508-473-2394  
mdean@townofmilford.com

Michael Dean, P.E.  
Town Engineer

### M E M O R A N D U M

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TO: Mr. Michael Giampietro, Chairman – Conservation Commission  
FROM: Michael Dean, P.E. *MD*  
DATE: September 11, 2020  
SUBJECT: **49 Sumner Street – Benjamin Moore Property**  
**Request for Certificate of Compliance – DEP File # 223-818**

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The Request for a Certificate of Compliance, DEP File #223-818 is for work associated with an addition, parking, drainage, utilities and associated grading. The work took place in 2003-2004.

1. This office has not received “stamped” As-Built Plans to date.
2. The As-Built Plans that we did receive via email (pdf’s) do not show the drainage in front of the building (near Sumner Street), that is associated with this project.

The above items should be addressed prior to the issuance of the Certificate of Compliance.

G-7500



**Guerriere &  
Halnon, Inc.**  
ENGINEERING & LAND SURVEYING

[www.gandhengineering.com](http://www.gandhengineering.com)

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**Whitinsville Office**  
1029 Providence Road  
Whitinsville, MA 01588-2121  
(508) 234-6834/Fax (508) 234-6723

August 13, 2020

Milford Conservation Commission  
Town Hall – 52 Main Street  
Milford, MA 01757

RE: Benjamin Moore & Co.  
49 Sumner Street  
DEP File # 223-818

Dear Commission Member;

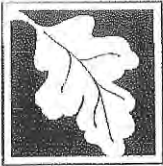
On behalf of the applicant, Benjamin Moore Co, 49 Sumner Street, Milford MA,, we are requesting a Certificate of Compliance for the work permitted by the Order of Conditions issued April 3, 2003.

The D.E.P. File Number is 223-818 and it was recorded in Book 29730 Page 133.

The work was completed but the order has lapsed. Enclosed are as-built plans of the property for review. Should there be any questions, please do not hesitate to contact us.

Sincerely,

Robert J. Poxon  
Project Engineer



Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
**WPA Form 8A – Request for Certificate of Compliance**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

223-818  
 Provided by DEP

**A. Project Information**

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



Upon completion of the work authorized in an Order of Conditions, the property owner must request a Certificate of Compliance from the issuing authority stating that the work or portion of the work has been satisfactorily completed.

1. This request is being made by:
 

Benjamin Moore & Co.  
 Name  
49 Sumner Street  
 Mailing Address  
Milford MA 01757  
 City/Town State Zip Code  
508-482-5616  
 Phone Number
2. This request is in reference to work regulated by a final Order of Conditions issued to:
 

Benjamin Moore & Co.  
 Applicant  
April 3, 2003 223-818  
 Dated DEP File Number
3. The project site is located at:
 

49 Sumner Street Milford  
 Street Address City/Town  
34 71 & 72A  
 Assessors Map/Plat Number Parcel/Lot Number
4. The final Order of Conditions was recorded at the Registry of Deeds for:
 

Benjamin Moore & Co.  
 Property Owner (if different)  
Worcester 29730 133  
 County Book Page  
 Certificate (if registered land)
5. This request is for certification that (check one):
 

the work regulated by the above-referenced Order of Conditions has been satisfactorily completed.

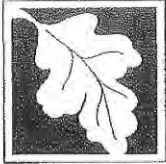
the following portions of the work regulated by the above-referenced Order of Conditions have been satisfactorily completed (use additional paper if necessary).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

the above-referenced Order of Conditions has lapsed and is therefore no longer valid, and the work regulated by it was never started.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 8A – Request for Certificate of Compliance**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

223-818  
Provided by DEP

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### A. Project Information (cont.)

6. Did the Order of Conditions for this project, or the portion of the project subject to this request, contain an approval of any plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor?

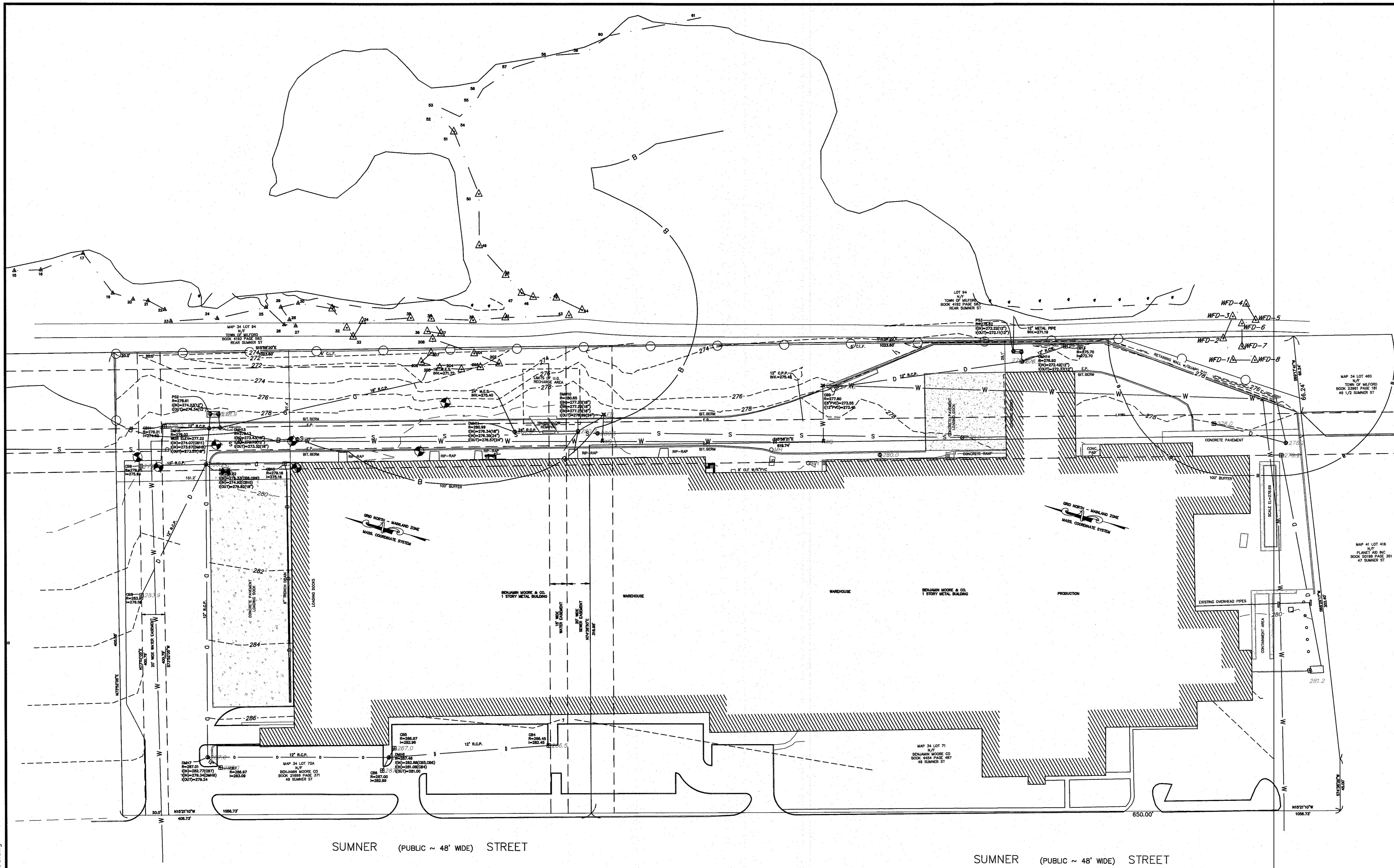
Yes      If yes, attach a written statement by such a professional certifying substantial compliance with the plans and describing what deviation, if any, exists from the plans approved in the Order.

No

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### B. Submittal Requirements

Requests for Certificates of Compliance should be directed to the issuing authority that issued the final Order of Conditions (OOC). If the project received an OOC from the Conservation Commission, submit this request to that Commission. If the project was issued a Superseding Order of Conditions or was the subject of an Adjudicatory Hearing Final Decision, submit this request to the appropriate DEP Regional Office (see <http://www.mass.gov/dep/about/region/findyour.htm>).



ADDRESS: 49 SUMNER STREET  
 DATE:  
 "I HEREBY CERTIFY TO THE MILFORD CONSERVATION COMMISSION THAT THE WORK SHOWN HERE ON IS COMPLETE AND IS SUBSTANTIALLY IN COMPLIANCE WITH THE ORDER OF CONDITIONS D.E.P. FILE # 223-818"

PROFESSIONAL ENGINEER

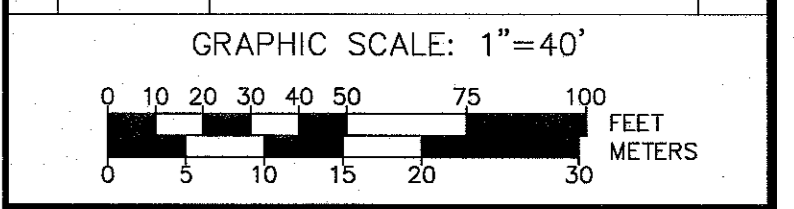
- NOTES
1. PLAN REFERS TO NAD 83 HORIZONTAL COORDINATE SYSTEM.
  2. PLAN REFERS TO NAVD 88 VERTICAL DATUM.
  3. SURFACE FEATURES ARE FROM A FIELD SURVEY CONDUCTED BY GUERRIERE & HALNON, INC. IN JULY 2020.
  4. SUBSURFACE UTILITIES ARE FROM RECORD INFORMATION AND UTILITY SURFACE MARKOUT BY OTHERS.

1. CONSTRUCTION ON THIS LOT IS SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY, RESTRICTIONS, RESERVATIONS OR OTHER LIMITATIONS WHICH MAY BE REVEALED BY AN EXAMINATION OF THE TITLE.
2. "WARNING" EXISTING UTILITY LINES INDICATED OR NOTED ON THESE DRAWINGS ARE SHOWN AS OBTAINED FROM EXISTING INFORMATION AND ARE ONLY APPROXIMATE IN LOCATION. THE CONTRACTOR SHALL TAKE CAUTION IN THESE AREAS TO AVOID DAMAGE TO EXISTING UTILITY LINES AND/OR HARM TO PERSONNEL ENGAGED IN WORKING IN THESE AREAS. CALL "DIG SAFE" 1-888-DIG-SAFE (1-888-344-7233). EXISTING LINES OTHER THAN THOSE INDICATED ON THESE DRAWINGS MAY BE ON THE SITE. THE CONTRACTOR IS WARNED TO PROCEED WITH CAUTION WITH ALL WORK, ESPECIALLY EXCAVATION WORK, AND TO MAKE ALL POSSIBLE INVESTIGATIONS AS TO POSSIBLE UNMARKED UTILITY LINES.

OWNER / APPLICANT  
 BENJAMIN MOORE & CO.  
 49 SUMNER STREET  
 MILFORD, MA 01757

BENJAMIN MOORE  
 SITE  
 AS-BUILT  
 #49 SUMNER STREET  
 IN  
 MILFORD, MA  
 SCALE: 40 FEET TO AN INCH  
 DATE: AUGUST 13, 2020

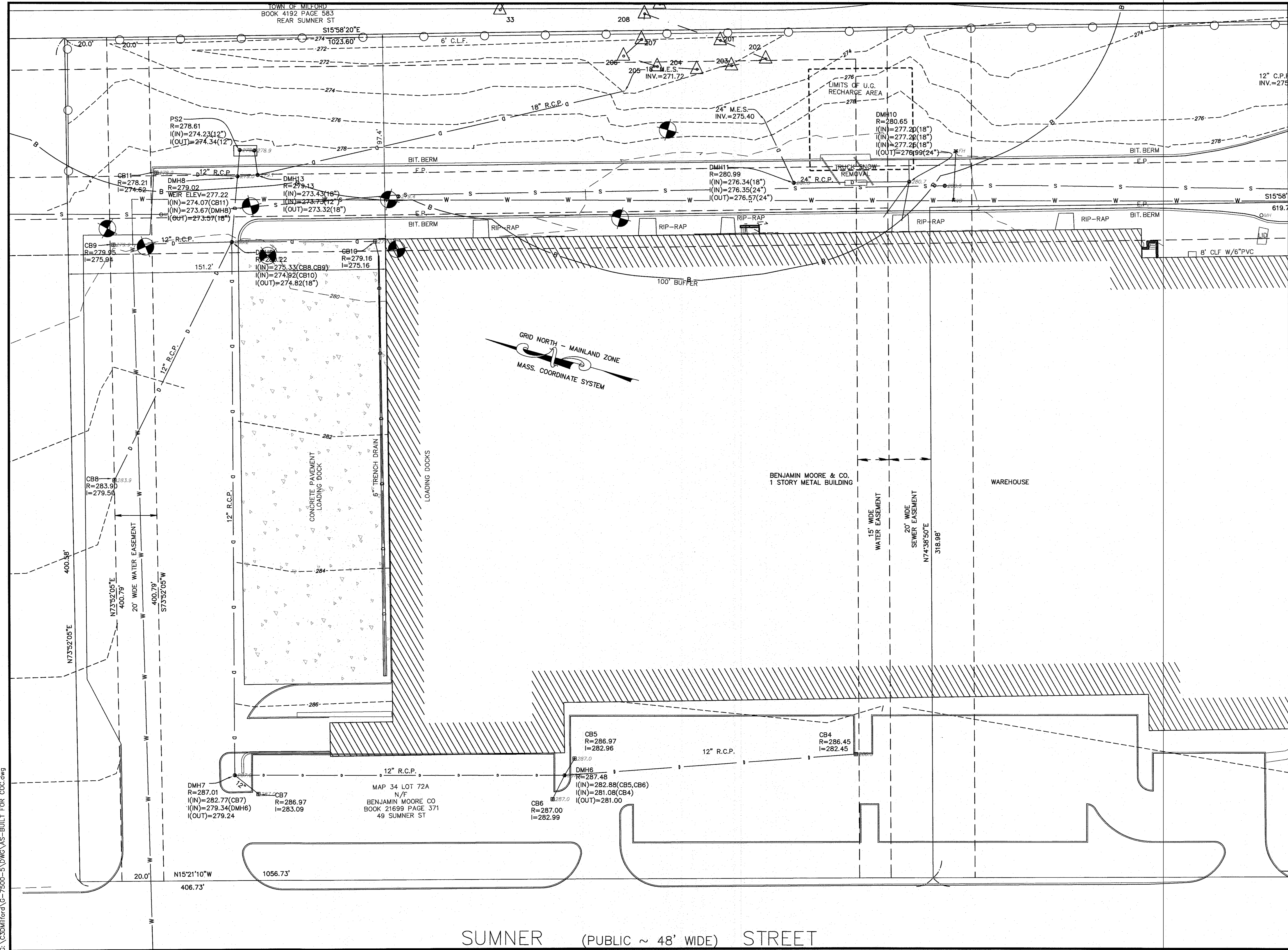
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ADDRESS: 49 SUMNER STREET  
 DATE:  
 "I HEREBY CERTIFY TO THE MILFORD CONSERVATION COMMISSION THAT THE WORK SHOWN HERE ON IS COMPLETE AND IS SUBSTANTIALLY IN COMPLIANCE WITH THE ORDER OF CONDITIONS D.E.P. FILE # 223-818"

PROFESSIONAL ENGINEER

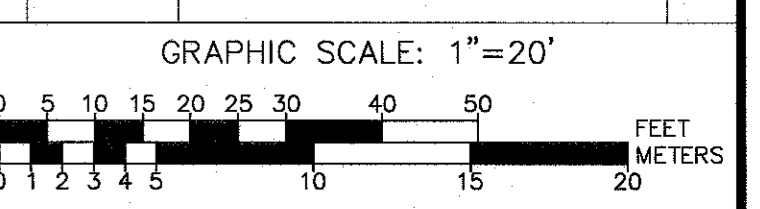
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  4. SUBSURFACE UTILITIES ARE FROM RECORD INFORMATION AND UTILITY SURFACE MARKOUT BY OTHERS.

1. CONSTRUCTION ON THIS LOT IS SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY, RESTRICTIONS, RESERVATIONS OR OTHER LIMITATIONS WHICH MAY BE REVEALED BY AN EXAMINATION OF THE TITLE.
2. "WARNING" EXISTING UTILITY LINES INDICATED OR NOTED ON THESE DRAWINGS ARE SHOWN AS OBTAINED FROM EXISTING INFORMATION AND ARE ONLY APPROXIMATE IN LOCATION. THE CONTRACTOR SHALL TAKE CAUTION IN THESE AREAS TO AVOID DAMAGE TO EXISTING UTILITY LINES AND/OR HARM TO PERSONNEL ENGAGED IN WORKING IN THESE AREAS. CALL "DIG SAFE" 1-888-DIG-SAFE (1-888-344-7233). EXISTING LINES OTHER THAN THOSE INDICATED ON THESE DRAWINGS MAY BE ON THE SITE. THE CONTRACTOR IS WARNED TO PROCEED WITH CAUTION WITH ALL WORK, ESPECIALLY EXCAVATION WORK, AND TO MAKE ALL POSSIBLE INVESTIGATIONS AS TO POSSIBLE UNMARKED UTILITY LINES.

OWNER / APPLICANT  
 BENJAMIN MOORE & CO.  
 49 SUMNER STREET  
 MILFORD, MA 01757

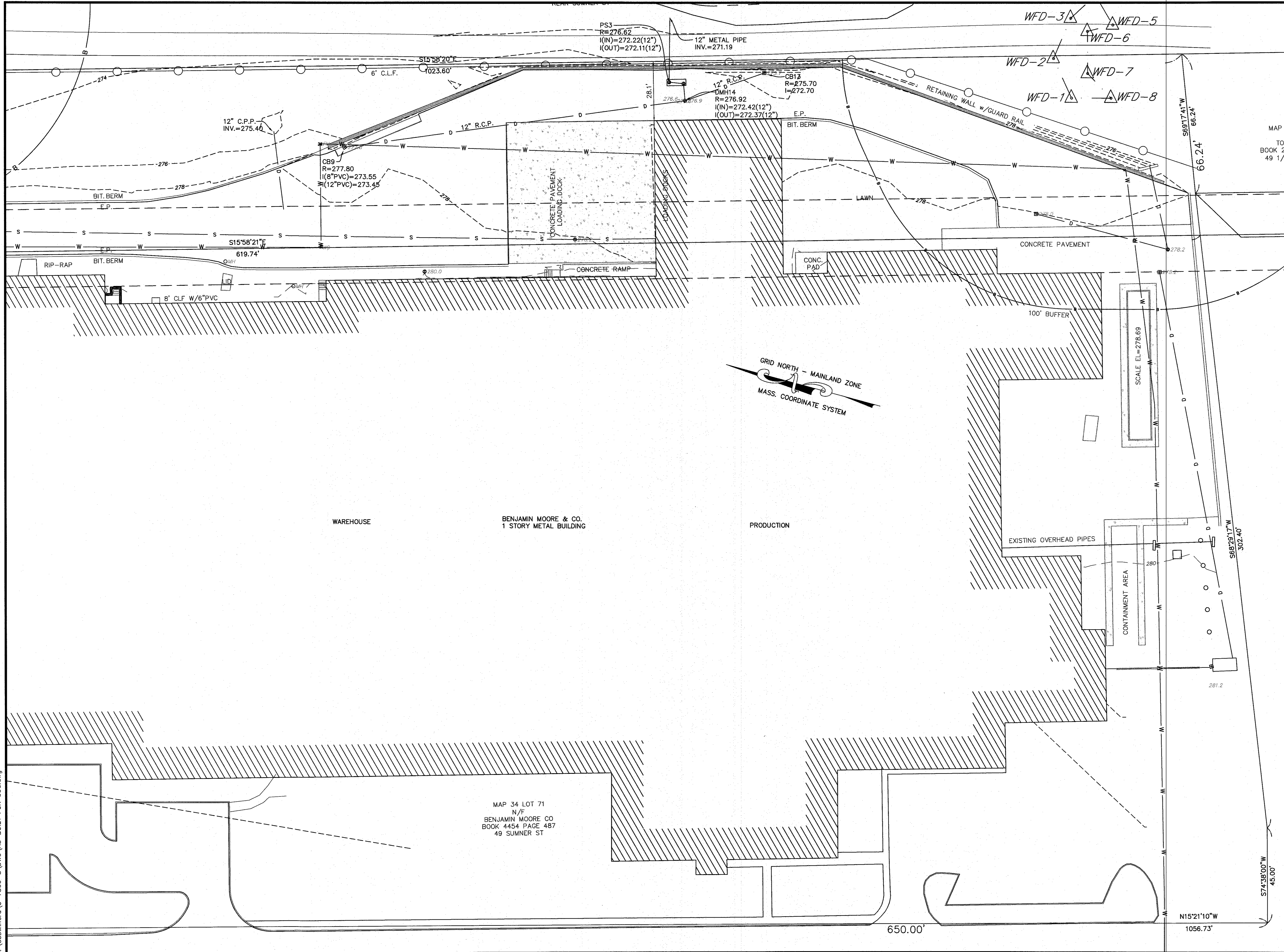
BENJAMIN MOORE  
 SITE AS-BUILT  
 #49 SUMNER STREET  
 IN  
 MILFORD, MA  
 SCALE: 20 FEET TO AN INCH  
 DATE: JULY 30, 2020

| NO. | DATE | INITIAL | SUBMITTAL | INIT |
|-----|------|---------|-----------|------|
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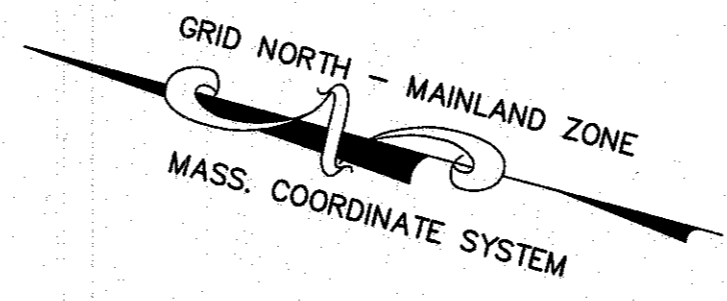
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ADDRESS: 49 SUMNER STREET  
 DATE:  
 "I HEREBY CERTIFY TO THE MILFORD CONSERVATION COMMISSION THAT THE WORK SHOWN HERE ON IS COMPLETE AND IS SUBSTANTIALLY IN COMPLIANCE WITH THE ORDER OF CONDITIONS D.E.P. FILE # 223-818"

MAP 34  
 TOWN BOOK 239  
 49 1/2  
 PROFESSIONAL ENGINEER

- NOTES
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  2. PLAN REFERS TO NAVD 88 VERTICAL DATUM.
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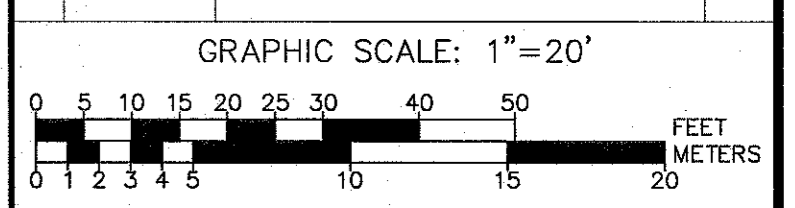
WAREHOUSE  
 BENJAMIN MOORE & CO.  
 1 STORY METAL BUILDING  
 PRODUCTION

MAP 34 LOT 71  
 N/F  
 BENJAMIN MOORE CO  
 BOOK 4454 PAGE 487  
 49 SUMNER ST

OWNER / APPLICANT  
 BENJAMIN MOORE & CO.  
 49 SUMNER STREET  
 MILFORD, MA 01757

BENJAMIN MOORE  
 SITE AS-BUILT  
 #49 SUMNER STREET  
 IN  
 MILFORD, MA  
 SCALE: 20 FEET TO AN INCH  
 DATE: JULY 30, 2020

| NO | DATE | INITIAL | SUBMITTAL | INIT |
|----|------|---------|-----------|------|
|    |      |         |           |      |
|    |      |         |           |      |



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G-7500-5

## **Agenda Item # 4**



## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757

508-634-2317 Fax 508-473-2394

mdean@townofmilford.com

OFFICE OF PLANNING  
AND ENGINEERING

Michael Dean, P.E.  
*Town Engineer*

### M E M O R A N D U M

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TO: Mr. Michael Giampietro, Chairman – Conservation Commission  
FROM: Michael Dean, P.E. *MD*  
DATE: September 10, 2020  
SUBJECT: **Partial Certificate – Whitewood Preserve  
4 Popia Court (Unit 2)**

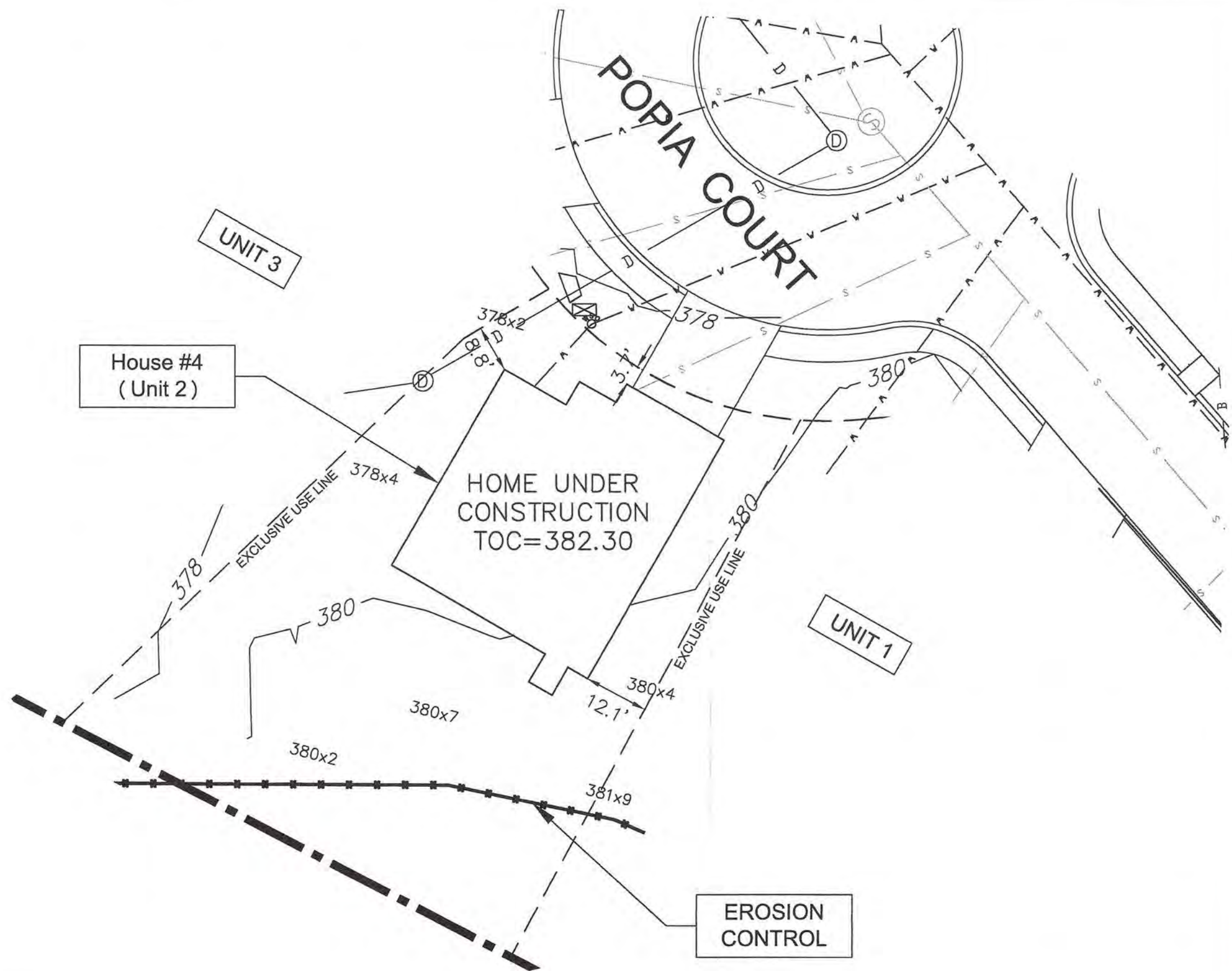
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The Owner / Applicant, Snowflake, LLC, Kevin Lobisser, 1 Charlesview Road, Hopedale, MA 01747, has filed a request for a **Partial** Certificate of Compliance for 1 of the 29- units (Condos) within the **Whitewood Preserve** Planned Residential Community (PRD), DEP File # 223-1122.

The areas adjacent to the unit are not 100 % loamed and/or seeded, however this is one unit out of the 29 units and it would be highly unlikely that these areas would not be loamed and seeded once final grading is completed, in addition, the request is for a Partial COC. To date, approximately fifteen (15) Units have already received Partial Certificates.

This particular unit is outside of the 100-foot Buffer Zone, the partial Certificate of Compliance is to clear title.

I recommend the issuance of a Partial Certificate of Compliance for 4 Popia Court (Unit 2).

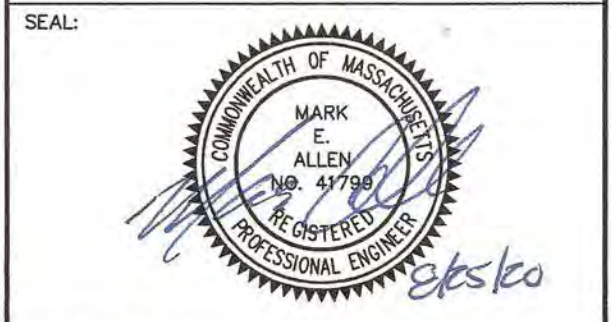


**LEGEND**

- AS-BUILT CONTOUR
- BUFFER ZONE
- TREE LINE
- BORDERING VEGETATED WETLANDS

PREPARED FOR:  
**Lobisser Building Corp.**  
 1 Charlesview Road  
 Suite 1  
 Hopedale, MA 01747

TITLE:  
**"Conservation As-Built Plan"**  
 For  
**#4 Popia Court (Unit 2)**  
**Whitewood Preserve**  
 Off  
 Whitewood Road  
 In  
 Milford, MA



PREPARED BY:  
**ALLEN ENGINEERING & ASSOCIATES, INC.**  
 Civil Engineers • Surveyors  
 Land Development Consultants  
 One Charlesview Road, Suite 2  
 Hopedale, Ma 01747  
 (508) 381-3212 Phone  
 www.allen-ea.com

SCALE: 1"=20 FEET

DATE: **August 25, 2020**

| REVISIONS |      |             |      |
|-----------|------|-------------|------|
| #         | DATE | DESCRIPTION | INIT |
|           |      |             |      |

JOB NO: 00131 SHEET: **1 of 1**

- NOTES:
- DEP FILE #223-1122
  - AS-BUILT SURVEY PERFORMED BY ALLEN ENGINEERING & ASSOCIATES IN AUGUST 2019
  - THIS PLAN IS FOR A REQUEST FOR PARTIAL CERTIFICATE OF COMPLIANCE ONLY.

**Agenda Item # 5**



OFFICE OF PLANNING  
AND ENGINEERING

## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757  
508-634-2317 Fax 508-473-2394  
mdean@townofmilford.com

Michael Dean, P.E.  
*Town Engineer*

September 10, 2020

Mr. Michael Giampietro, Chairman  
Conservation Commission  
52 Main Street  
Milford, MA, 01757

Re: **Request for Certificate of Compliance – 1 National Street (Former Glass Plant)**  
DEP File # 223-1162

Dear Mr. Giampietro:

I have reviewed the Request for Certificate of Compliance for 1 National Street, the Applicant is Milford National LLC, Gregory Schain, 1 National Street, Milford, MA 01757. The project is the site formerly known as Foster Forbes (many years ago) and most recently Ardagh Group.


The proposed project has been under construction for well over a year and has been in front of the commission and received Orders of Conditions as recently as this past August, 2020. The project originally received an order of conditions for **Demolition work only**, DEP File #223-1162, the other filing was for the actual construction of the site, this was under a separate Order of Conditions, DEP File # 223-1167.

This request for a certificate of compliance is for the original order of conditions (which included one amended order of conditions) for DEP File # 223-1162, The **Demolition work only**, which has been completed.

This was for demo work only, so there are no actual site improvements to be shown and the site is currently under construction. The construction of the site will continue under the Order of Conditions for DEP File # 223-1167.

I recommend the issuance of a full certificate of compliance for DEP File # 223-1162.

Sincerely,



Michael Dean, P.E.  
Town Engineer



September 9, 2020

Mr. Michael A. Giampietro, Chairman  
Town of Milford Conservation Commission  
52 Main Street  
Milford, Massachusetts

Re: Certificate of Compliance Request  
1 National Street, Milford  
**DEP # 223-1162**  
MAI Project No. 8511

Via: Hand Delivery

Dear Chairman Giampietro and Members of the Commission:

On behalf of Milford National LLC, Meridian Associates, Inc. (MAI) is submitting this request for a Certificate of Compliance (COC) to “close out” the two Order of Conditions (OOC) for work associated with Milford National’s demolition work at 1 National Street. This request is submitted pursuant to the Massachusetts Wetlands Protection Act (Act) and the Town of Milford Wetlands Protection Bylaw.

This request for a COC relates to the two demolition related OOC’s for the project as follows:

- OOC recorded at Book 60132, Page 194 – For the original “phase 1” demo work.
- OOC recorded at Book 61923, Page 356 – Amendment for additional building demolition approved/issued by Commission in January 2020.

Enclosed as part of this request is a completed Certificate of Compliance Form WPA Form 8A.

All of the demolition work that was subject to the original and amended OOC’s has been substantially completed in accordance with the approved plans and OOC’s.

Only work related to the approved site redevelopment (file no. 223-1167) continues. A COC will be requested for this work, along with the provision of a comprehensive as-built plan for the site after sitework is completed later this year. An as-built plan was not provided with the demolition related COC request since it simply would show which buildings and site components were removed.

Since the original OOC was amended, and could be considered superseded, seeking a COC on the original OOC (along with a COC request for the amended OOC) may not be necessary, but





1 National Street  
COC Request  
September 9, 2020  
Page 2 of 2

we are conservatively requesting such if the Commission or any other agencies or entities find it to be necessary/desired.

As required, a copy of this request has also been filed with the Central Regional Office of the Department of Environmental Protection (DEP) in Worcester.

We trust that the information included herein is sufficient to facilitate Commission review and action if appropriate at its meeting on September 23, 2020. Should you have any questions or require additional information, please contact us at (508) 449-0784.

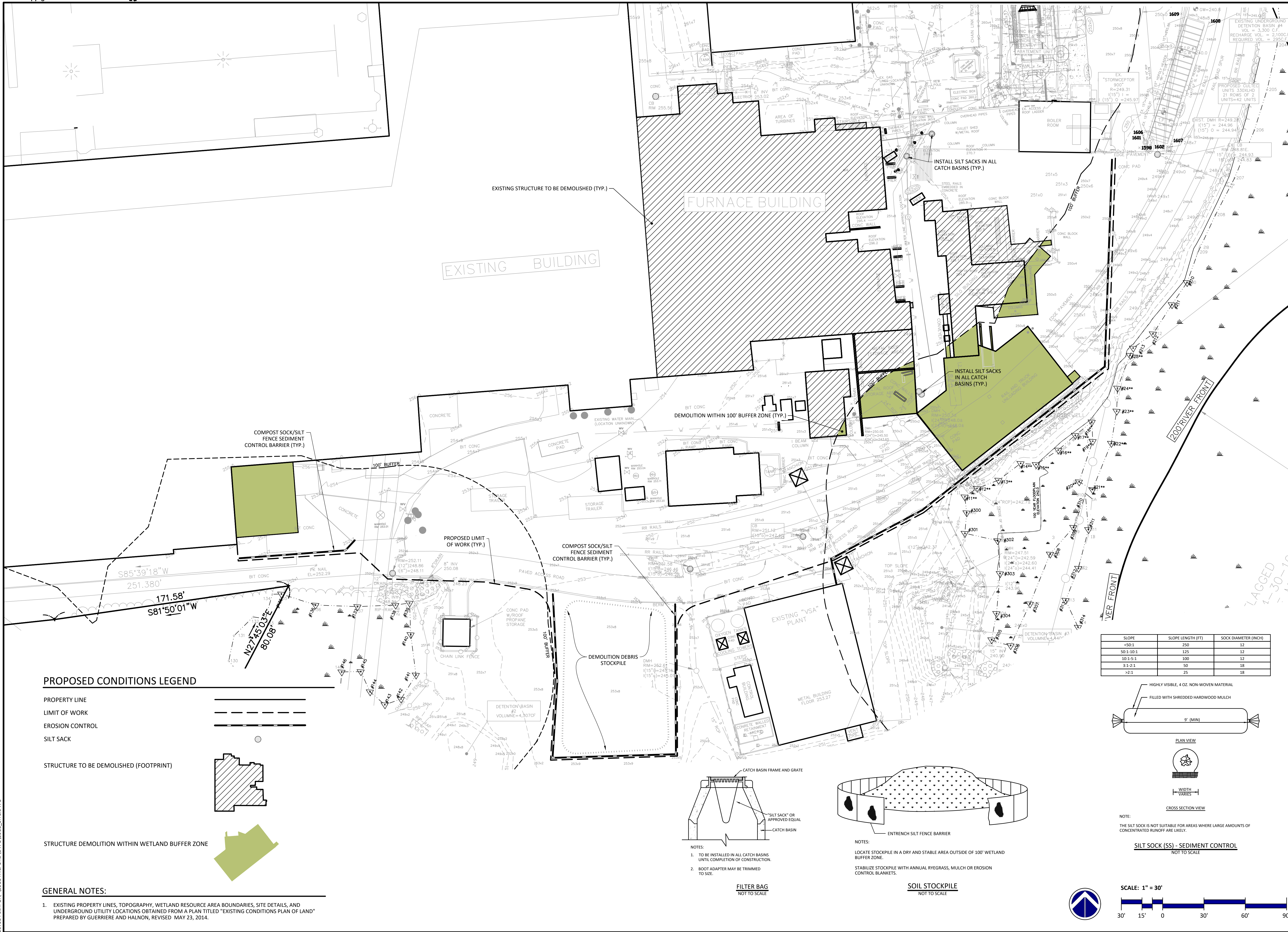
Sincerely,

**MERIDIAN ASSOCIATES, INC.**

Mark E. Beaudry, PE  
Vice President

Enclosures

cc: MA DEP Central Regional Office;  
Dacon Corporation;  
Milford National LLC.

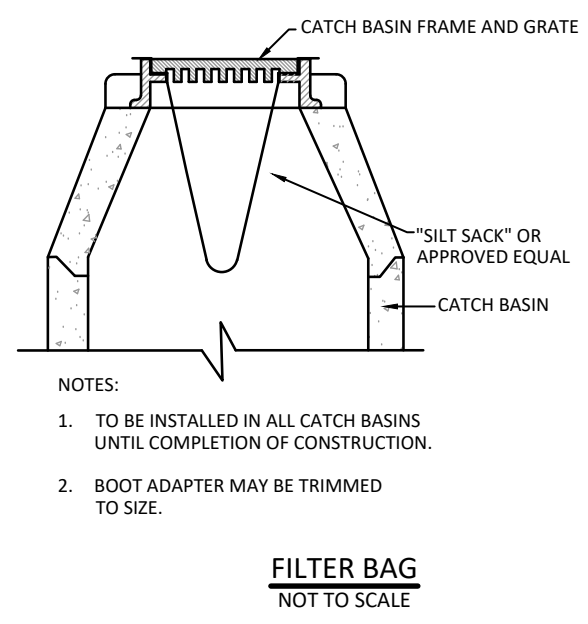


**PROPOSED CONDITIONS LEGEND**

- PROPERTY LINE
- LIMIT OF WORK
- EROSION CONTROL
- SILT SACK
- STRUCTURE TO BE DEMOLISHED (FOOTPRINT)
- STRUCTURE DEMOLITION WITHIN WETLAND BUFFER ZONE

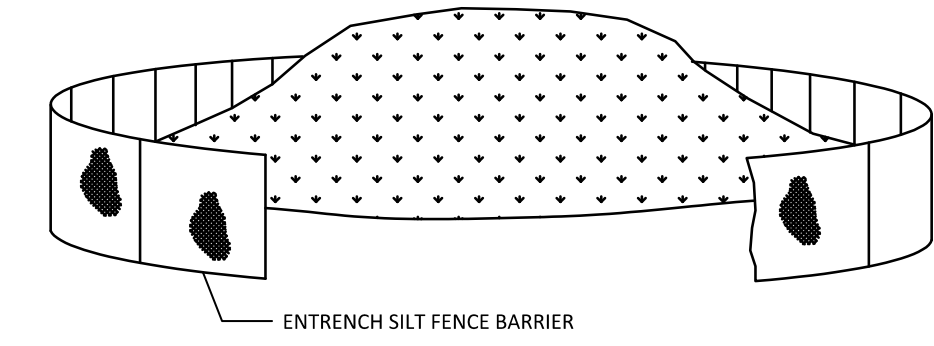
**GENERAL NOTES:**

1. EXISTING PROPERTY LINES, TOPOGRAPHY, WETLAND RESOURCE AREA BOUNDARIES, SITE DETAILS, AND UNDERGROUND UTILITY LOCATIONS OBTAINED FROM A PLAN TITLED "EXISTING CONDITIONS PLAN OF LAND" PREPARED BY GUERRIERE AND HALNON, REVISED MAY 23, 2014.



- NOTES:**
1. TO BE INSTALLED IN ALL CATCH BASINS UNTIL COMPLETION OF CONSTRUCTION.
  2. BOOT ADAPTER MAY BE TRIMMED TO SIZE.

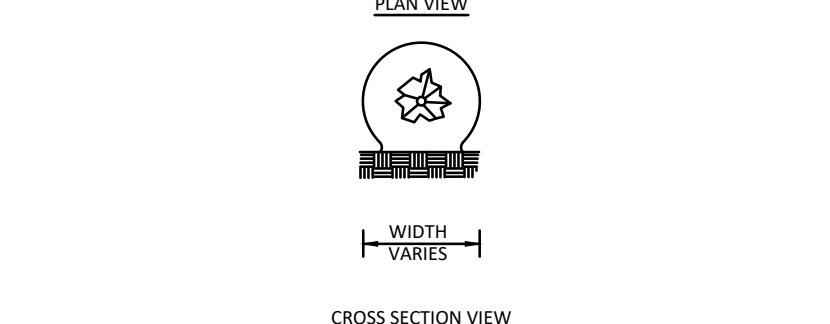
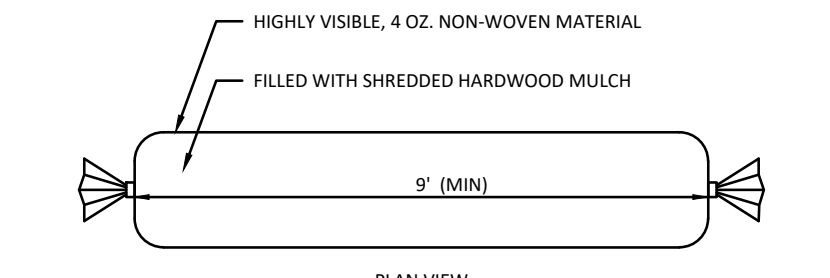
**FILTER BAG**  
NOT TO SCALE



- NOTES:**
- LOCATE STOCKPILE IN A DRY AND STABLE AREA OUTSIDE OF 100' WETLAND BUFFER ZONE.
  - STABILIZE STOCKPILE WITH ANNUAL RYEGRASS, MULCH OR EROSION CONTROL BLANKETS.

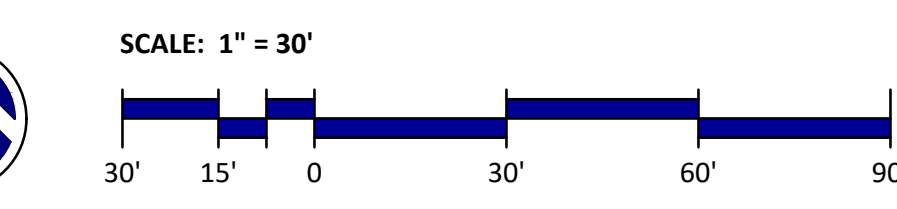
**SOIL STOCKPILE**  
NOT TO SCALE

| SLOPE    | SLOPE LENGTH (FT) | SOCK DIAMETER (INCH) |
|----------|-------------------|----------------------|
| <5:1     | 250               | 12                   |
| 5:1-10:1 | 125               | 12                   |
| 10:1-1:1 | 100               | 12                   |
| 3:1-2:1  | 50                | 18                   |
| >2:1     | 25                | 18                   |



**NOTE:**  
THE SILT SOCK IS NOT SUITABLE FOR AREAS WHERE LARGE AMOUNTS OF CONCENTRATED RUNOFF ARE LIKELY.

**SILT SOCK (SS) - SEDIMENT CONTROL**  
NOT TO SCALE



**REVISIONS**

| NO. | DATE      | DESCRIPTION                  |
|-----|-----------|------------------------------|
| 1   | 2.15.2019 | REMOVE PAVING, ADD STOCKPILE |



**SITE DEMOLITION PLAN**  
1 NATIONAL STREET  
MILFORD, MA 01757  
Prepared For:  
NEW MILL CAPITAL  
575 LEXINGTON AVE, 4TH FLOOR  
NEW YORK, NY 10022



**Date:**  
February 5, 2019  
(See Revisions)  
**Scale:**  
1"=30'  
**Project No.**  
8511  
**Sheet No.**  
C-1  
1 OF 1

## **Agenda Item # 6**



OFFICE OF PLANNING  
AND ENGINEERING

## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757

508-634-2317 Fax 508-473-2394

mdean@townofmilford.com

Michael Dean, P.E.  
*Town Engineer*

September 10, 2020

Mr. Michael Giampietro, Chairman  
Conservation Commission  
52 Main Street  
Milford, MA, 01757

Re: 1 Ivy Lane  
**Request for Determination of Applicability**

Dear Mr. Giampietro:

I have reviewed the Request for Determination of Applicability (RDA), the applicant is Grace Lavalley, 1 Ivy Lane, Milford, MA.

The RDA is for the installation of a gas service to an existing residential house, the gas service will be installed in the existing driveway. This activity will occur within the buffer zones to bordering vegetated wetlands / Ivy Brook; however, all the activity is in areas that have been previously disturbed.

The applicant should install erosion control along the edge of the driveway before installation of the gas service commences as referenced in the Narrative provided by Eversource.

I recommend the issuance of a **Negative** Determination of Applicability.

Sincerely,

Michael Dean, P.E.  
Town Engineer

|                            |  |
|----------------------------|--|
| <i>Proposed Project</i>    | Natural Gas Pipe Service   |
| <i>Agency Submittals</i>   | Conservation Commission  |
| <i>Purpose</i>             | The provide natural gas service to a new customer.   |
| <i>Project Description</i> | Natural gas plastic pipe is proposed for installation in the existing roadway and new customer's property. The pipe will be installed using the Open Trench Method as described below. |

#### Open Trench Method

The Open Trench Method consists of digging an excavation approximately 1-2 feet wide and approximately 2-3 feet deep. Trenches will be constructed using backhoes or excavators. The trenching operation will be limited to the length that can be completed in one day (approximately 50 to 200 feet depending on field conditions). The excavated material will be temporarily placed alongside the trench to be re-used as backfill. The pipe is then installed inside the trench, backfilled, and tamped. Upon completion of the job, any previously paved areas within the public way will be repaved. Any remaining excavated material is the responsibility of the property owner. The property owner is responsible for restoration of lawn and driveway within their property limits.

All excavation, backfilling and safety practices are done in accordance with NSTAR Gas Standard C-150-1/4, as well as Department of Transportation Title 49 Part 192, Massachusetts Department of Labor and Industries Bulletin 12, and the U.S. Department of Labor OSHA Title 29 Part 1910.

|  |  |
|--|--|
| <i>Existing Environmental Conditions</i> | Identifying existing conditions included a review for wetland resource areas. NHESP Priority and estimated habitat areas were not identified onsite. Areas were identified using GIS mapping with data supplied from the MassGIS web-site.   |
| <i>Best Management Practices:</i>        | <p>Potential impacts to the resource areas described above would be due to excavation spillage, spoil pile runoff or trench washout during rain conditions. These concerns will be addressed through the use of various work procedures and the placement of protective barriers as follows:</p> <ul style="list-style-type: none"><li>• Erosion control barriers will be placed between the proposed work area and the wetland resource areas. Appropriate erosion controls will consist of straw wattles or similar alternative.</li><li>• Catch basins will be protected with filter fabric to ensure that sediments do not enter the drainage system.</li><li>• Erosion controls will be inspected on a regular basis and maintained in working condition until all disturbed areas are stabilized.</li><li>• As the work is limited to that which can be completed and restored within a day, there is minimal, if any, potential for impact to waterways, wetlands or other habitat areas.</li></ul> |

- No soil will be stockpiled overnight within buffer zones during this project. Unused spoils will be removed and disposed of according to applicable laws.
- No work shall be performed adjacent to resource areas during rain conditions to minimize runoff and washout situations.
- In the event that trench dewatering is necessary, water will be pumped from the excavation to a dewatering pit. Under no circumstances will trench water, or other forms of turbid water, be directly discharged onto or into any wetland or waterbody.
- Since the gas pipe will be underground there will be no permanent alteration of the landscape.
- All non-paved areas will be replaced to a state at which they were prior to the job. Any sod or other plantings shall be replaced in kind, or with reasonable alternative.

*Proposed Schedule*

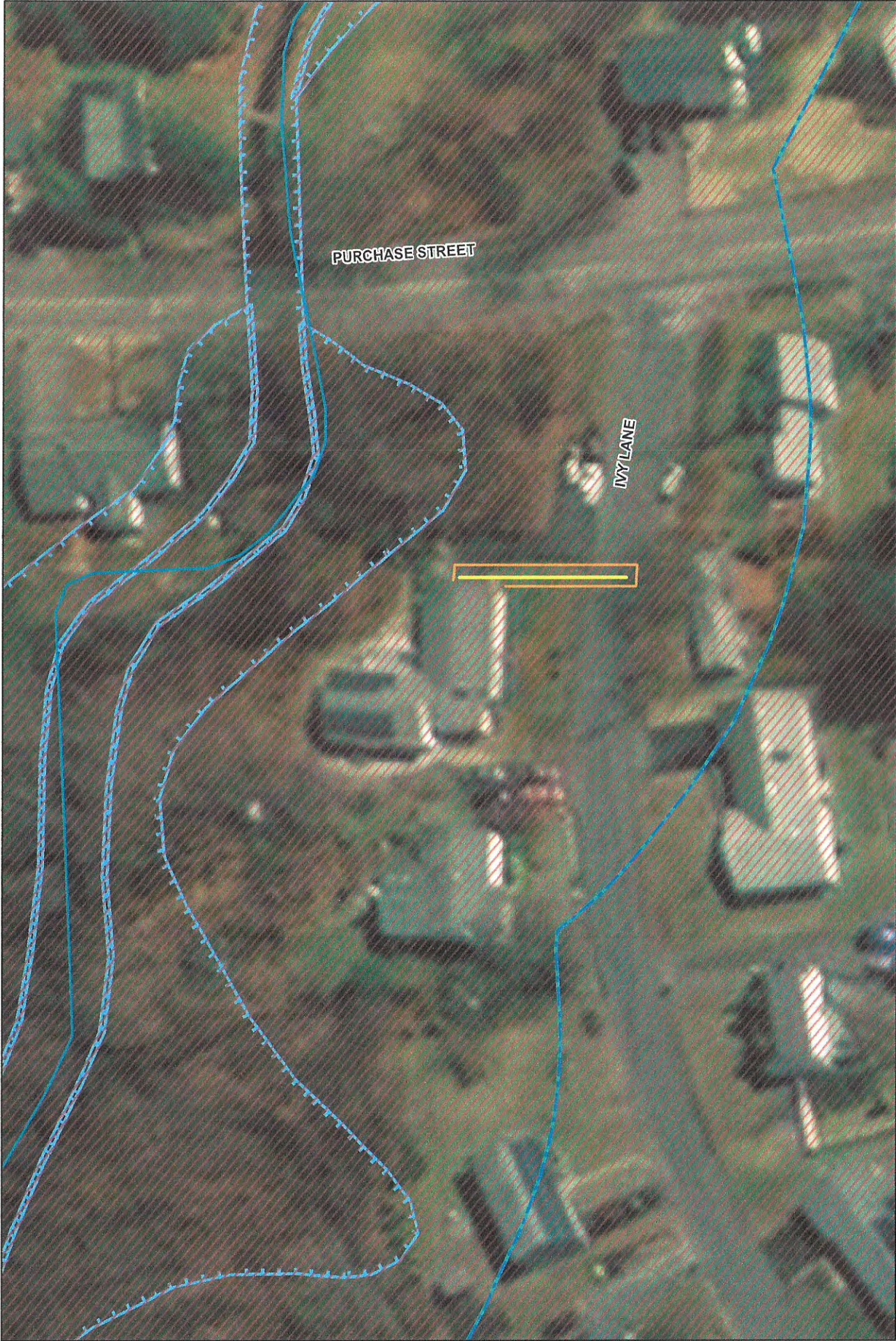
We anticipate that the proposed project will begin within 30 days of this notification or filing, and take approximately 2-3 days to complete.

*Contact  
Information*

Jennifer L. Buttaro  
Environmental Specialist  
Eversource - Licensing & Permitting  
Environmental Affairs Department  
247 Station Drive, SE 270  
Westwood, MA 02090

Office: 781-441-3808







Email: [jennifer.buttaro@eversource.com](mailto:jennifer.buttaro@eversource.com)

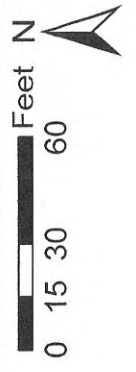


PURCHASE STREET

IVY LANE

**Legend**

-  Perennial Stream
-  200' RFA
-  FEMA 100-Year
-  Historic Land or Areas
-  Proposed Gas Main
-  Erosion Controls



**Agenda Item # 7**





OFFICE OF PLANNING  
AND ENGINEERING

## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757

508-634-2317 Fax 508-473-2394

mdean@townofmilford.com

Michael Dean, P.E.  
*Town Engineer*

September 10, 2020

Mr. Michael Giampietro, Chairman  
Conservation Commission  
52 Main Street  
Milford, MA, 01757

Re: Notice of Intent for **Milford Regional Medical Center (MRMC)**  
**14 Prospect Street**  
DEP File # 223-\_\_\_\_\_

Dear Mr. Giampietro:

I have reviewed the Notice of Intent (NOI) filing for the **Milford Regional Medical Center**, 14 Prospect Street. The proposal is for the construction of a 100' x 50' maintenance garage in an area that is currently a parking lot. This project was approved by the Commission back in April 2017. The work never took place and the order of conditions has expired; this is the reason for the new filing.

Following a review of the submitted documents, I recommend the issuance of an Order of Conditions.

Sincerely,

Michael Dean, P.E.  
Town Engineer

G-1545-13



Milford Office  
333 West Street, P. O. Box 235  
Milford, MA 01757-0235  
(508) 473-6630/Fax (508) 473-8243

Franklin Office  
55 West Central Street  
Franklin, MA 02038-2101  
(508) 528-3221/Fax (508) 528-7921

Whitinsville Office  
1029 Providence Road  
Whitinsville, MA 01588-2121  
(508) 234-6834/Fax (508) 234-6723

August 26, 2020

Milford Conservation Commission  
52 Main Street  
Milford, MA 01757

RE: Notice of Intent – 14 Prospect Street – Milford Medical Maintenance Facility

Dear Commission Members,

On behalf of our client, Milford Regional Medical Center, we are filing a Notice of Intent for the construction of a 100' x 50' metal maintenance building with a covered outdoor storage area along with the associated grading and utility connections within the 100 ft. buffer of a bordering vegetated wetlands. Enclosed, please find two (2) copies of the following: completed Notice of Intent, portion of geodetic showing locus, Resource Area Plan and the appropriate filing fee (see attached Notice of Intent transmittal form).

Abutters are being notified of this filing, as required by the Wetlands Protection Act. We have also filed one (1) copy of the Notice of Intent package with the Massachusetts Department of Environmental Protection, Central Regional Office, 8 New Bond Street, Worcester, MA 01606 and have submitted the required filing fee to D.E.P. in Boston.

If you have any questions concerning this filing please contact me.

Sincerely,

Daniel Hazen  
Project Engineer  
Guerriere & Halnon, Inc.

G-1545-13



**Guerriere &  
Halnon, Inc.**

**ENGINEERING & LAND SURVEYING**

[www.gandhengineering.com](http://www.gandhengineering.com)

*Est. 1972*

**Milford Office**  
333 West Street, P. O. Box 235  
Milford, MA 01757-0235  
(508) 473-6630/Fax (508) 473-8243

**Franklin Office**  
55 West Central Street  
Franklin, MA 02038-2101  
(508) 528-3221/Fax (508) 528-7921

**Whitinsville Office**  
1029 Providence Road  
Whitinsville, MA 01588-2121  
(508) 234-6834/Fax (508) 234-6723

**Notice of Intent**  
  
**For**  
  
**14 Prospect Street**  
  
**In**  
  
**Milford, Massachusetts**

**Date: August 26, 2020**

Applicant:  
*Milford Regional Medical Center  
14 Prospect Street  
Milford, MA 01757*

Prepared by:  
*Guerriere & Halnon, Inc.  
Engineering & Land Surveying  
PO Box 235  
Milford, MA 01757*

**Massachusetts Department of Environmental Protection**

Bureau of Resource Protection - Wetlands

**WPA Form 3 - Notice of Intent**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

MassDEP File #:

eDEP Transaction #:1213418

City/Town:MILFORD

**A.General Information**

1. Project Location:

|                   |                    |                |           |
|-------------------|--------------------|----------------|-----------|
| a. Street Address | 14 PROSPECT STREET |                |           |
| b. City/Town      | MILFORD            | c. Zip Code    | 01757     |
| d. Latitude       | 42.13333N          | e. Longitude   | 71.52858W |
| f. Map/Plat #     | 49 & 51            | g.Parcel/Lot # | 51, 82-88 |

2. Applicant:

Individual  Organization

|                    |                                 |             |                   |
|--------------------|---------------------------------|-------------|-------------------|
| a. First Name      |                                 | b.Last Name |                   |
| c. Organization    | MILFORD REGIONAL MEDICAL CENTER |             |                   |
| d. Mailing Address | 14 PROSPECT STREET              |             |                   |
| e. City/Town       | MILFORD                         | f. State    | MA                |
| g. Zip Code        |                                 |             | 01757             |
| h. Phone Number    | 508-442-2499                    | i. Fax      |                   |
| j. Email           |                                 |             | joeboz@milreg.org |

3.Property Owner:

more than one owner

|                    |                                 |              |                   |
|--------------------|---------------------------------|--------------|-------------------|
| a. First Name      |                                 | b. Last Name |                   |
| c. Organization    | MILFORD REGIONAL MEDICAL CENTER |              |                   |
| d. Mailing Address | 14 PROSPECT STREET              |              |                   |
| e. City/Town       | MILFORD                         | f. State     | MA                |
| g. Zip Code        |                                 |              | 01757             |
| h. Phone Number    | 508-442-2499                    | i. Fax       |                   |
| j. Email           |                                 |              | joeboz@milreg.org |

4.Representative:

|                    |                         |              |                             |
|--------------------|-------------------------|--------------|-----------------------------|
| a. First Name      | DAN                     | b. Last Name | HAZEN                       |
| c. Organization    | GUERRIERE & HALNON, INC |              |                             |
| d. Mailing Address | PO BOX 235              |              |                             |
| e. City/Town       | MILFORD                 | f. State     | MA                          |
| g. Zip Code        |                         |              | 01757                       |
| h. Phone Number    | 508-473-6630            | i. Fax       |                             |
| j. Email           |                         |              | Dhazen@gandhengineering.com |

5.Total WPA Fee Paid (Automatically inserted from NOI Wetland Fee Transmittal Form):

|                  |          |                  |        |                      |        |
|------------------|----------|------------------|--------|----------------------|--------|
| a.Total Fee Paid | 1,050.00 | b.State Fee Paid | 512.50 | c.City/Town Fee Paid | 537.50 |
|------------------|----------|------------------|--------|----------------------|--------|

6.General Project Description:

THE PROJECT PROPOSES TO CONSTRUCT A 100'X50' METAL MAINTENANCE BUILDING WITH A COVERED OUTDOOR STORAGE AREA OVER AN EXISTING PAVED PARKING LOT.AND GRAVEL PARKING AREA. THE PROJECT PROPOSES MINOR GRADING ACTIVITIES IN ADDITION TO UTILIZING THE EXISTING DRAINAGE SYSTEM, CONNECTING PROPOSED UTILITY SERVICES TO ONSITE STUBS AND INSTALLING A 1,500 GALLON HOLDING TANK FOR THE FLOOR DRAINS. THE DESIGN OF THE EXISTING DRAINAGE SYSTEM WAS REVISED IN 2018 AND INCLUDED THE IMPERVIOUS AREAS FOR THIS PHASE OF THE PROJECT.

7a.Project Type:

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Single Family Home                | 2. <input type="checkbox"/> Residential Subdivision          |
| 3. <input type="checkbox"/> Limited Project Driveway Crossing | 4. <input checked="" type="checkbox"/> Commercial/Industrial |

## **Resource Area Plan**



**Agenda Item # 8**



## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757

508-634-2317 Fax 508-473-2394

mdean@townofmilford.com

OFFICE OF PLANNING  
AND ENGINEERING

Michael Dean, P.E.  
*Town Engineer*

August 17, 2020

Mr. Michael Giampietro, Chairman  
Conservation Commission  
52 Main Street  
Milford, MA, 01757

Re: Notice of Intent for **65 Field Pond Road (Lot 14), Sanylah Crossing Subdivision**  
DEP File # 223- 11 77

Dear Mr. Giampietro:

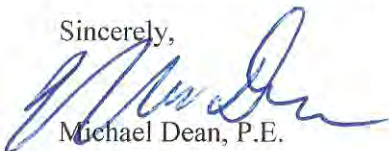
I have reviewed the Notice of Intent filing for 65 Field Pond Road (Lot 14), a lot within the Sanylah Crossing Subdivision. The filing is for the construction of a single family house lot, associated with work within the 100-foot buffer Zone to the Bordering Vegetated Wetlands.

Following a review of the submittal, I offer the following comments:

1. The trees have already been cleared, must have been due to an oversight. All the work is in the 100-foot Buffer Zone of the BVW, there is no alteration of the Resource Areas. The closest distance from the proposed activity to the edge of the wetlands is approximately 5-feet +/-.
2. Erosion control measures should be shown on the plan.
3. The wetland flag numbers are shown on some of the flags, but not all of the flags. The remaining wetland flag numbers should be added to the plan.

I recommend that the above items be added to the plan and then issue an Order of Conditions.

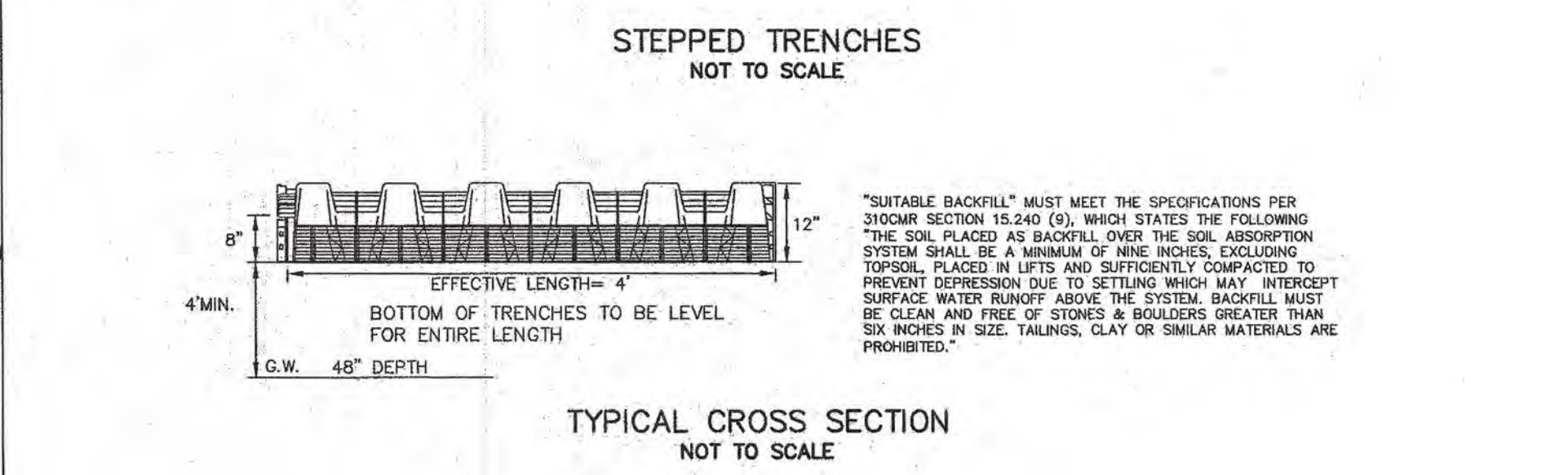
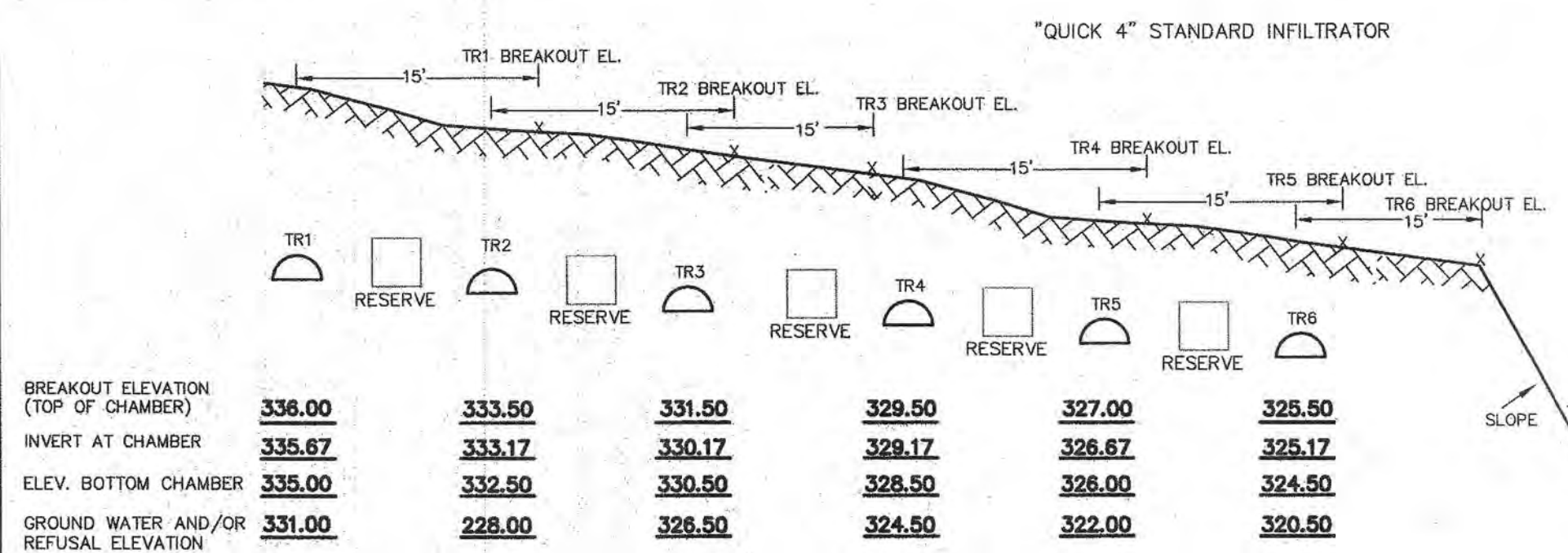
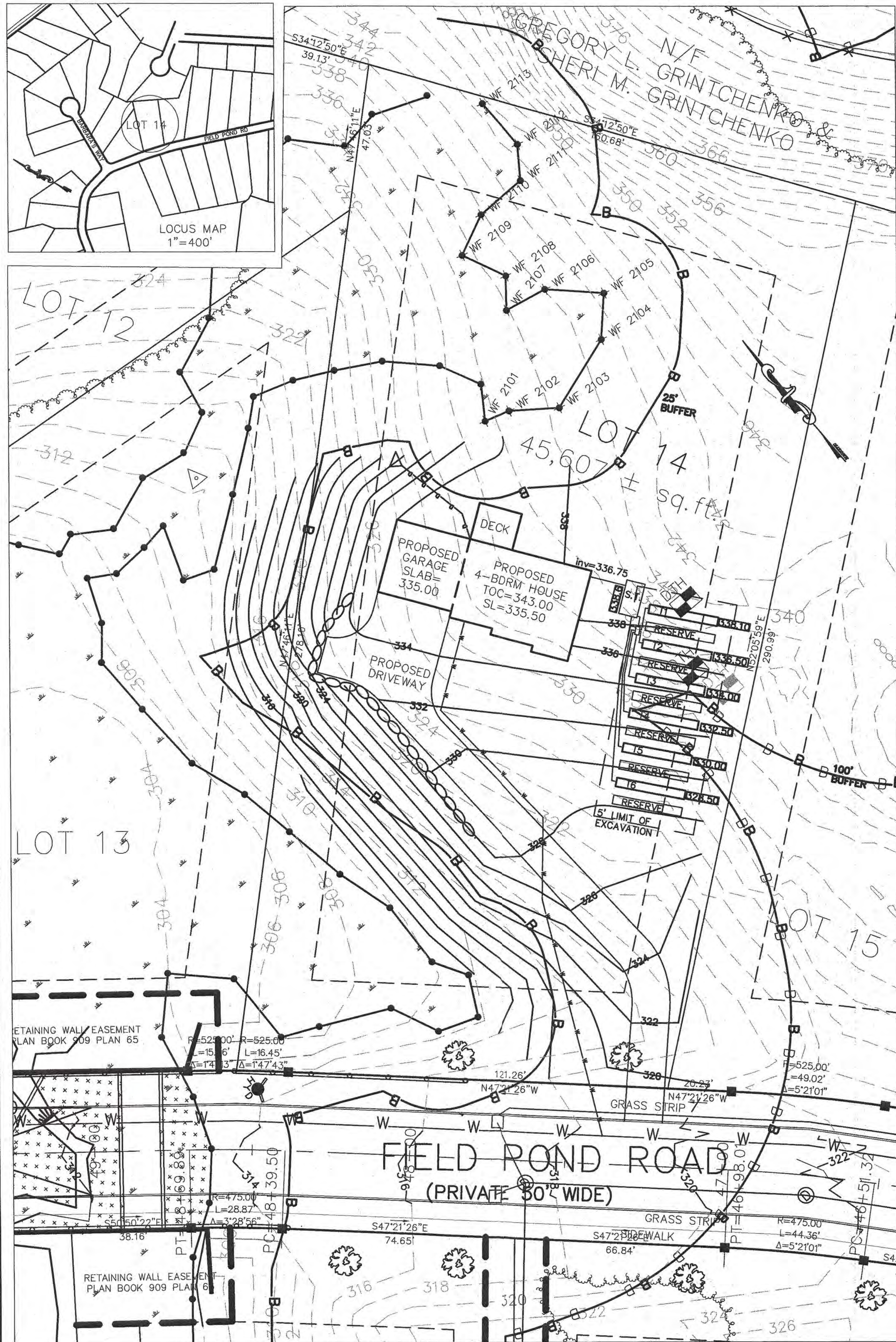
Sincerely,



Michael Dean, P.E.  
Town Engineer



SEPTIC SYSTEM EXCAVATION TO BE INSPECTED BY DESIGN ENGINEER PRIOR TO CONSTRUCTION OF FOUNDATION



MINIMUM ZONING REQUIREMENTS

|                    |             |
|--------------------|-------------|
| ZONING DISTRICT    | RC          |
| AREA               | 45,000 S.F. |
| FRONT YARD SETBACK | 30          |
| SIDE YARD SETBACK  | 20          |
| REAR YARD SETBACK  | 30          |

KEY

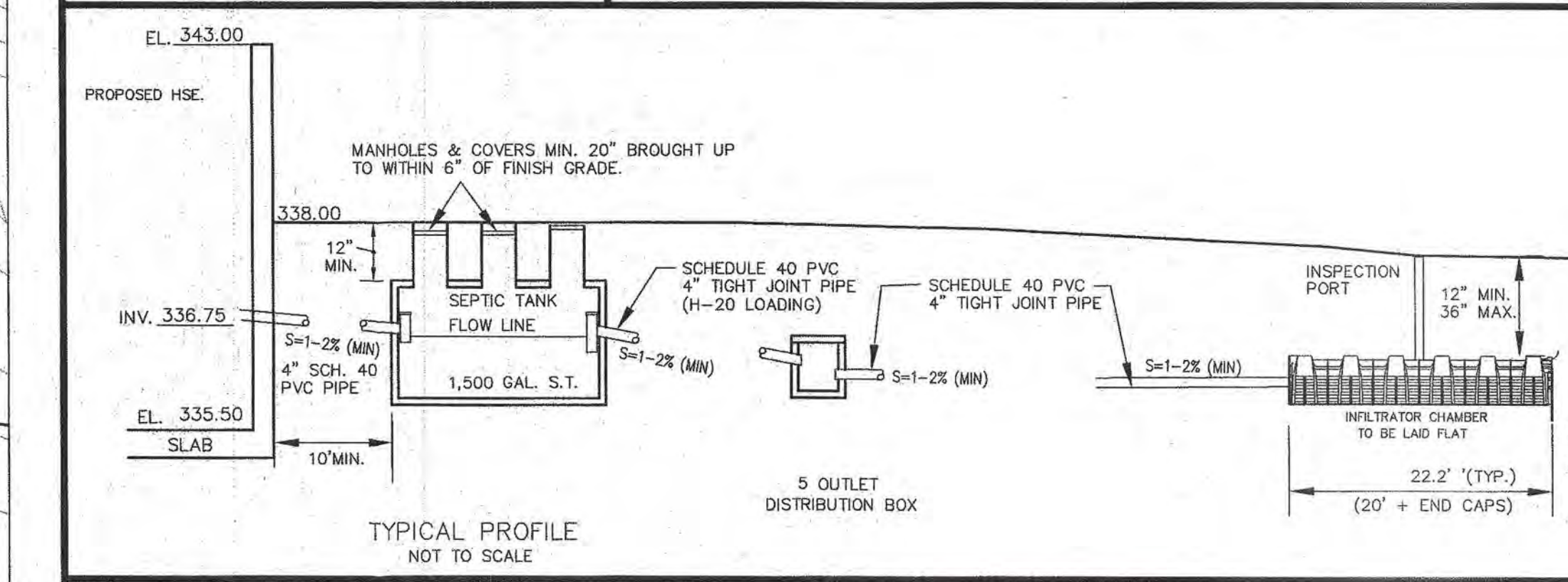
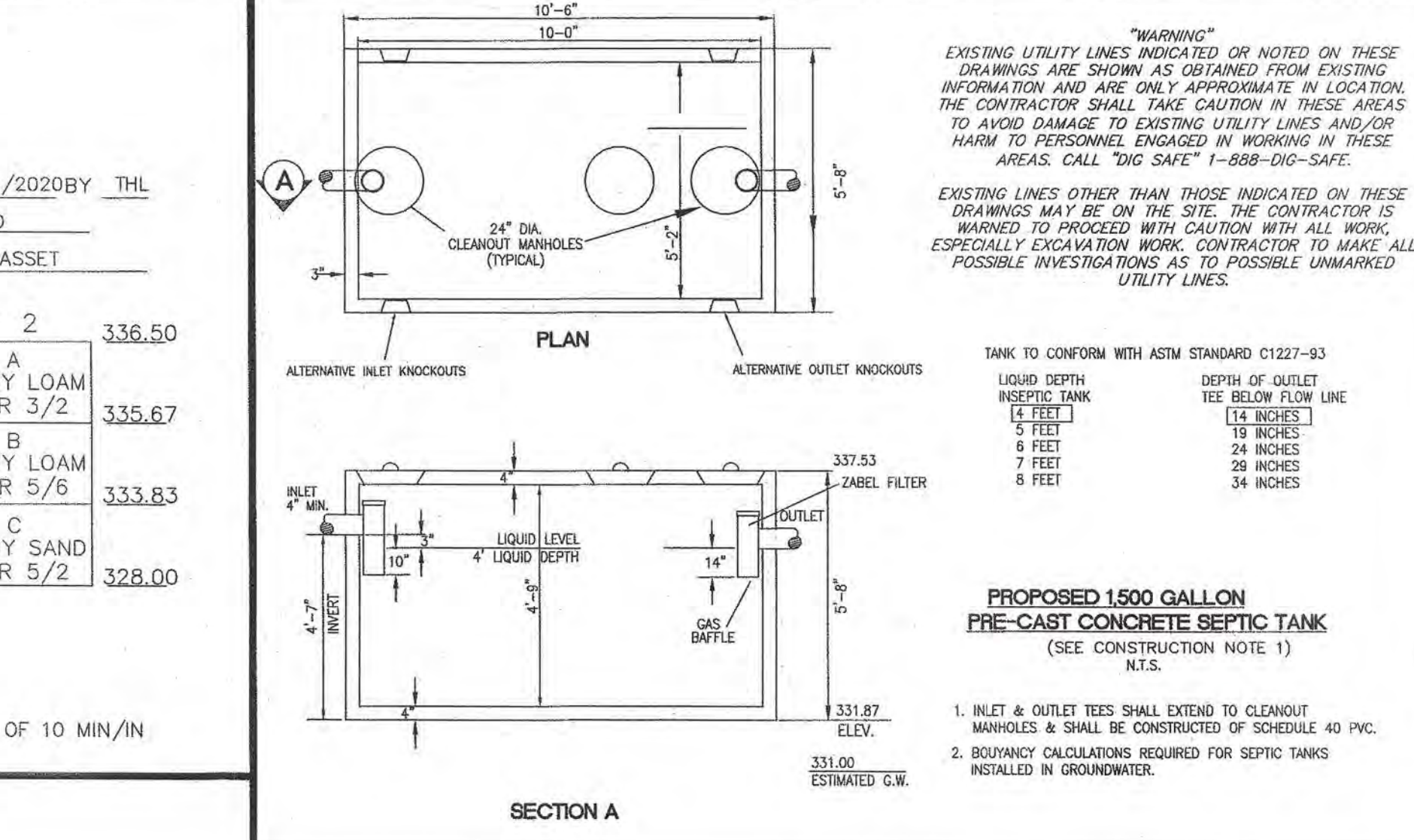
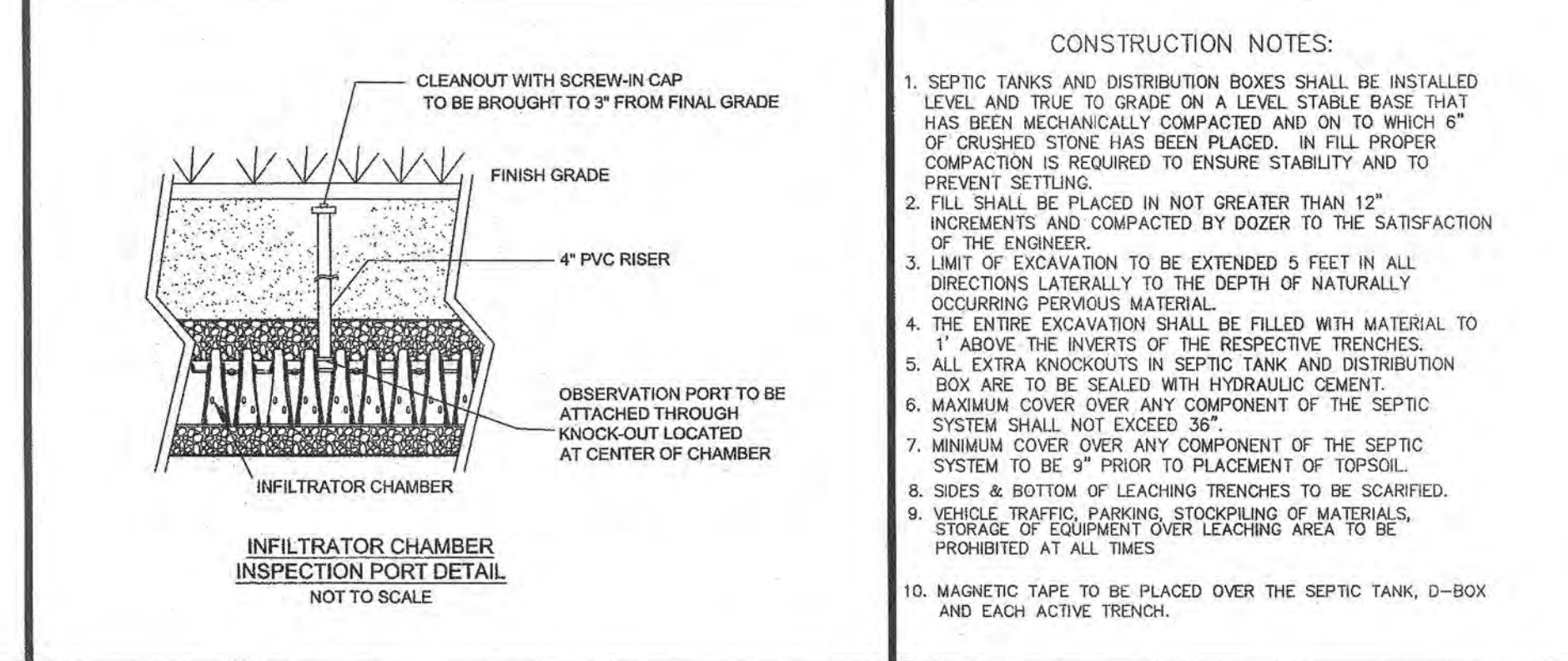
|                           |        |
|---------------------------|--------|
| LIMIT OF EXCAVATION       | L.O.E. |
| FINISHED GRADE            | F.G.   |
| SEPTIC TANK               | S.T.   |
| DISTRIBUTION BOX          | D.B.   |
| EXISTING CONTOURS         |        |
| PROPOSED CONTOURS         | 100.0  |
| EXISTING ELEVATIONS       | 100.0  |
| PROPOSED ELEVATIONS       | 100.0  |
| EDGE OF WETLANDS          | B.M.   |
| 100' WETLAND BUFFER ZONE  | B.M.   |
| BENCHMARK                 | B.M.   |
| WATER GATE                | WV     |
| WETLAND BOUND             | W      |
| PRIVATE WATER SUPPLY      | W      |
| TOP OF CONCRETE           | T.O.C. |
| PERC. TEST/DEEP TEST HOLE | PT     |

DEEP TESTS TAKEN 5/27/16 BY MAH PERC. TESTS TAKEN 6/8/2020 BY THL  
 WITNESSED MIKE CATALANO WITNESSED MIKE CATALANO  
 SOIL EVALUATOR MIKE HASSETT SOIL EVALUATOR MIKE HASSETT

|        |            |     |          |         |        |
|--------|------------|-----|----------|---------|--------|
| 339.00 | DH# 1      | N/A | WATER    | N/A     | 336.50 |
| 338.33 | A          | 8"  | 96"      | 102"    | 335.67 |
|        | SANDY LOAM |     |          |         |        |
|        | 10YR 3/2   |     |          |         |        |
| 336.50 | B          | 22" | N/A      | MOTTLES | 333.83 |
|        | SANDY LOAM |     |          |         |        |
|        | 10YR 5/6   |     |          |         |        |
| 331.00 | C          | 66" | CLASS II | SOIL    | 328.00 |
|        | LOAMY SAND |     |          |         |        |
|        | 10YR 5/2   |     |          |         |        |

PERC. 7 MIN./INCH  
 CONFIRMATORY PERC TEST ON 6/8/2020 RESULTED IN PERC RATE OF 10 MIN/IN

- DESIGN NOTES:
1. ALL TOPSOIL, SUBSOIL AND OTHER IMPERVIOUS MATERIAL SHALL BE EXCAVATED TO PERVIOUS MATERIALS.
  2. THE INSTALLATION OF PROPOSED SYSTEM SHALL BE DONE IN CONFORMANCE WITH LOCAL AND STATE BOARD OF HEALTH REGULATIONS.
  3. NO PORTION OF THIS SYSTEM SHALL BE ALTERED WITHOUT APPROVAL FROM THE BOARD OF HEALTH AND THE DESIGN ENGINEER.
  4. FILL MATERIAL FOR SYSTEMS CONSTRUCTED IN FILL SHALL CONSIST OF SELECT ON-SITE OR IMPORTED SOIL MATERIAL, CONSISTING OF CLEAN GRANULAR SAND FREE FROM ORGANIC MATTER AND DELETERIOUS SOIL SUBSTANCES, MIXTURES AND LAYERS OF DIFFERENT CLASSES OF SOIL SHALL NOT BE USED. A SIEVE ANALYSIS SHALL BE PERFORMED IN ACCORDANCE WITH 310 CMR 15.25(3).
  5. IT IS RECOMMENDED THAT SEPTIC TANKS BE INSPECTED FOR CLEANING ONCE A YEAR.
  6. THIS SYSTEM IS NOT DESIGNED TO ACCOMMODATE A GARBAGE DISPOSAL.
  7. ELEVATIONS REFERS TO USGS VERTICAL DATUM OF 1929.
  8. OFFSETS NOT TO BE USED FOR THE REPRODUCTION OF PROPERTY LINES.
  9. ALL INSPECTIONS NECESSARY FOR THE CERTIFICATION OF THE SEPTIC SYSTEM AND THE PREPARATION OF AN AS-BUILT PLAN ARE TO BE PERFORMED BY THE DESIGN ENGINEER.
- GENERAL NOTES:
1. THERE ARE NO PUBLIC WELLS WITHIN 500 FEET OF PROJECT.
  2. THERE ARE NO PRIVATE WELLS WITHIN 200 FEET OF PROJECT.
  3. THERE ARE NO BORDERING VEGETATED WETLANDS, SURFACE WATERS, SURFACE DRAINS, OPEN SURFACE WITHIN 150 FEET UNLESS SHOWN ON THE PLAN OR AS DETERMINED BY THE MILFORD CONSERVATION COMMISSION.
  4. BENCHMARK TO BE SET WITHIN 50 FEET TO PROPOSED SEPTIC SYSTEM PRIOR TO CONSTRUCTION.
  5. COMPONENTS NOT TO BE BACKFILLED OR CONCEALED WITHOUT INSPECTION BY THE BOARD OF HEALTH AND PERMISSION OBTAINED FROM THE BOARD OF HEALTH.
  6. SYSTEM AREA SHALL BE STAKED AND FLAGGED OR OTHERWISE BARRICADED FROM DATE OF INSTALLATION UNTIL CERTIFICATE OF COMPLIANCE ISSUED.
  7. EXCAVATION TO BE DRY AND SCARIFIED.
  8. FILL TO BE STOCKPILED AT THE EDGE OF EXCAVATION AND PUSHED OR CAST INWARD OVER EXCAVATION AREA.
  9. FILL SHOULD NOT BE PLACED DURING RAIN OR SNOW STORM.
  10. SIEVE ANALYSIS SHALL BE PERFORMED ON THE FILL WHICH WILL BE USED FOR THE PROPOSED SYSTEM.
  11. LOT IS NOT LOCATED IN A NITROGEN SENSITIVE AREA.



DESIGN ELEVATIONS

|                                |          |
|--------------------------------|----------|
| TOP OF FOUNDATION              | 343.00   |
| SLAB ELEVATION                 | 335.50   |
| INV. AT FOUNDATION             | 336.75   |
| INV. AT SEPTIC TANK INLET      | 336.35   |
| INV. AT SEPTIC TANK OUTLET     | 336.15   |
| INV. AT DIST. BOX INLET        | 336.05   |
| INV. AT DIST. BOX OUTLET       | 335.88   |
| ELEV. TOP OF CHAMBER(BREAKOUT) | *        |
| INV. AT CHAMBER                | *        |
| BOTTOM OF CHAMBER              | *        |
| ELEV. OF GROUND WATER          | N/A      |
| ELEV. OF REFUSAL               | N/A      |
| AVERAGE ELEV. OVER SYSTEM      | SEE PLAN |

LEACHING FACILITY DESIGN CRITERIA

TITLE V  
 PERC. DESIGN RATE = 10 MIN./INCH  
 DESIGN FLOW = 4 x 110 = 440 GPD  
 E.L.R. = PERC. RATE FACTOR = 0.6 GPD/SF

STANDARD QUICK 4  
 EFFECTIVE LEACHING AREA = 6.98 SF/FT  
 CHAMBER LENGTH = 4.1 FT

REQUIRED  
 FLOW = 4 x 110 = 440 GPD  
 AREA = (440 / 0.6) = 733 SF CONVENTIONAL  
 = 733 x 0.67 = 490 SF  
 CHECK 440 SF > 440 SF USE 440 SF  
 EQUIVALENT LENGTH OF INFILTRATOR = 440 / (8/12 + 34/12 + 8/12) = 105.6 LF  
 # UNITS = 26.2 LF / 4 LF/UNIT = 27 UNITS

PROVIDED  
 # UNITS = 6 ROWS X 5 UNITS = 30 UNITS  
 FLOW LENGTH = 30 UNITS X 4 FT = 120 FT  
 AREA PROVIDED = 120 x 6.98 = 838 SF  
 = 835 x 0.6 = 501 GPD

\*EFFECTIVE LEACHING AREA (E.L.A.) REDUCTION ALLOWED PER "STANDARD CONDITIONS FOR ALTERNATIVE SOIL ABSORPTION SYSTEMS WITH GENERAL USE CERTIFICATION AND/OR APPROVED FOR REMEDIAL USE"

SITE DEVELOPMENT & FACILITIES PLAN  
 LOT 14 FIELD POND ROAD  
 IN  
 MILFORD, MA

SCALE: 20 FEET TO AN INCH  
 DATE: AUGUST 4, 2020  
 REV. DATE DESCRIPTION

OWNER/APPLICANT SANYLAH CROSSING, LLC  
 ADDRESS 95 E. MAIN ST. WESTBOROUGH, MA

Guerriero & Halnon, Inc.  
 Engineering & Land Surveying  
 333 WEST STREET, MILFORD, MASS. 01757  
 (508) 473-6630 FAX: (508) 473-8243

ELIZABETHA MAHON-SANCHEZ  
 No. 46098  
 REGISTERED PROFESSIONAL ENGINEER  
 SIGNATURE P.E.  
 8/4/20  
 DATE

**Agenda Item # 9**



OFFICE OF PLANNING  
AND ENGINEERING

## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757  
508-634-2317 Fax 508-473-2394  
mdean@townofmilford.com

Michael Dean, P.E.  
*Town Engineer*

August 18, 2020

Mr. Michael Giampietro, Chairman  
Conservation Commission  
52 Main Street  
Milford, MA, 01757

Re: Notice of Intent for **Birch Street Place** – 40B – 162 Units Off of Birch Street  
DEP File # 223- 11 78

Dear Mr. Giampietro:

I have reviewed the submitted Notice of Intent for the construction of a 162 Unit (40B) development off of Birch Street. The Applicant is, Lobisser Building Corp, 31 Whitewood Road, Milford, MA.

The project is to construct three (3), four (4) story buildings for a total of 162 units, access drive, parking, utilities, stormwater controls and associated grading. The project proposes to fill 1,370 S.F. of Wetlands, with 1,600 S.F. of proposed Wetlands Replication.

The site consists of a 27.32 Acre parcel of land Zoned Highway Industrial B (IB), Assessors Map 43, Block 300, Lot 1.

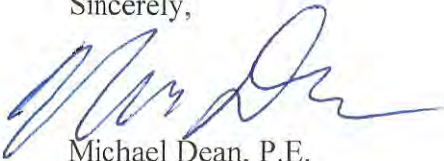
Following a review of the submitted documents I offer the following comments:

1. There does not appear to be any soil testing in the proposed Basins, as required by Stormwater Management Regulations. Following soil testing I will complete my review of the extensive drainage analysis.
2. Following a preliminary review of the drainage it is requested to summarize the pre and post peak flow rates and volumes, that reflect the Drainage areas shown in the Pre-development drainage map. The pre-development has three main drainage areas, 1S (western direction), 2S (middle portion / eastern direction- towards the potential vernal pool) & 3S (southern).

3. Not sure the smaller area draining towards the western direction (Portion of Pre-DA # 1S) in the Post condition, is included in the post drainage analysis.
4. The Resource Area Description / Report of the site should be submitted as part of the application. From a site walk that was performed some time ago, there was a hydraulic connection (behind the Automotive repair shop) from the general area of wetland flag #'s J26 to 200. This should be Clearly labeled and classified.

The above items should be addressed and I recommend continuing the hearing.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Dean".

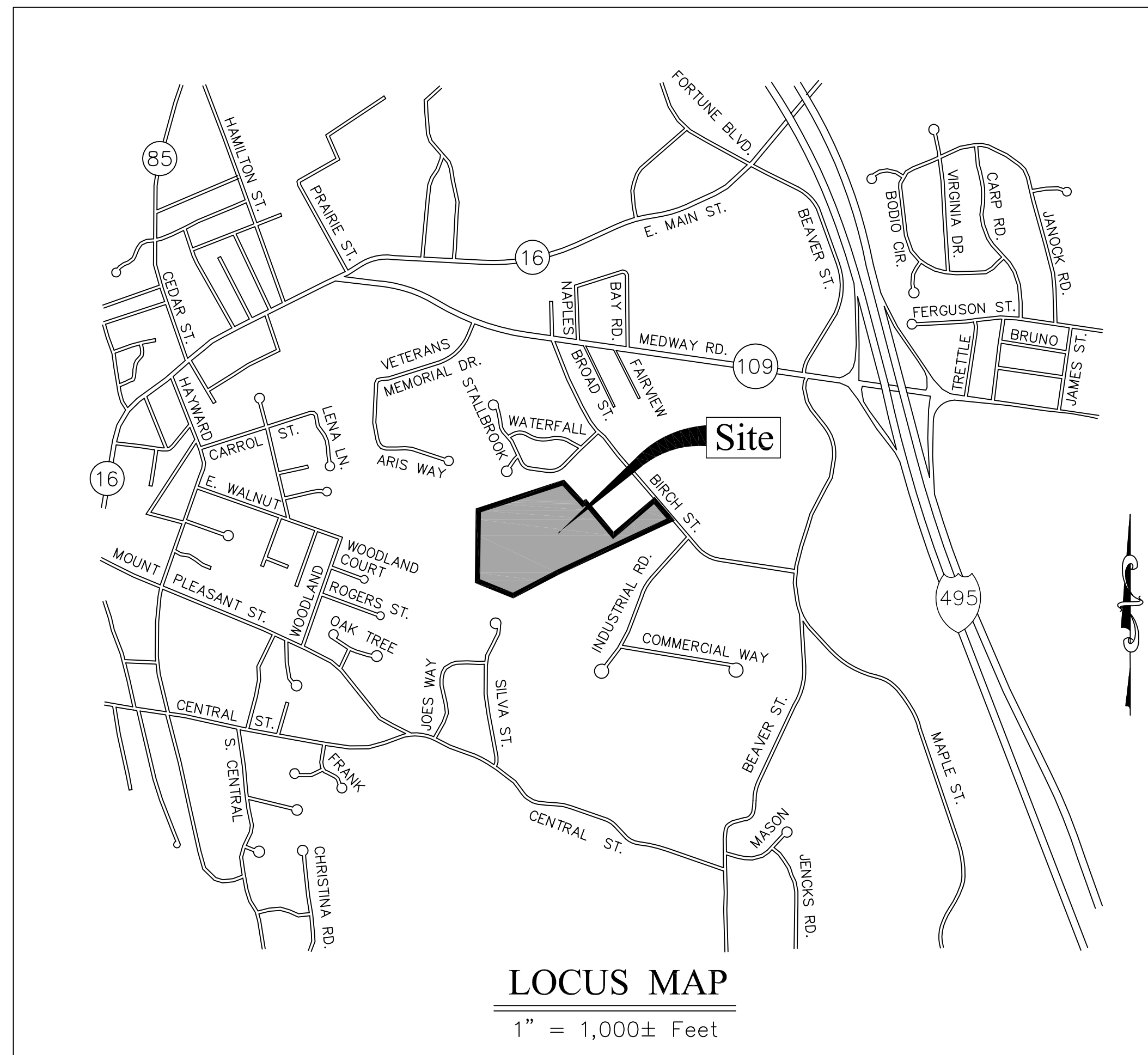
Michael Dean, P.E.  
Town Engineer

# Site Design Plan

## Birch Street Place

### Milford, MA 01757

| PLAN INDEX                               |       |
|--|-------|
| DESCRIPTION                              | SHEET |
| COVER SHEET                              | 1     |
| EXISTING CONDITIONS PLAN                 | 2     |
| PARKING & LAYOUT PLAN                    | 3     |
| GRADING, DRAINAGE & EROSION CONTROL PLAN | 4     |
| SITE UTILITY PLAN                        | 5     |
| LANDSCAPE & LIGHTING PLAN                | 6     |
| WETLAND REPLICATION & DETAILS            | 7     |
| CONSTRUCTION DETAILS                     | 8     |
| CONSTRUCTION DETAILS                     | 9     |
| CONSTRUCTION DETAILS                     | 10    |



June 8, 2020

| Revisions |      |             |    |
|-----------|------|-------------|----|
| NO.       | DATE | DESCRIPTION | BY |
|           |      |             |    |
|           |      |             |    |
|           |      |             |    |
|           |      |             |    |
|           |      |             |    |
|           |      |             |    |

**APPLICANT**  
**88 CORP.**  
One Charlesview Road, Suite 1  
Hopedale, MA 01747

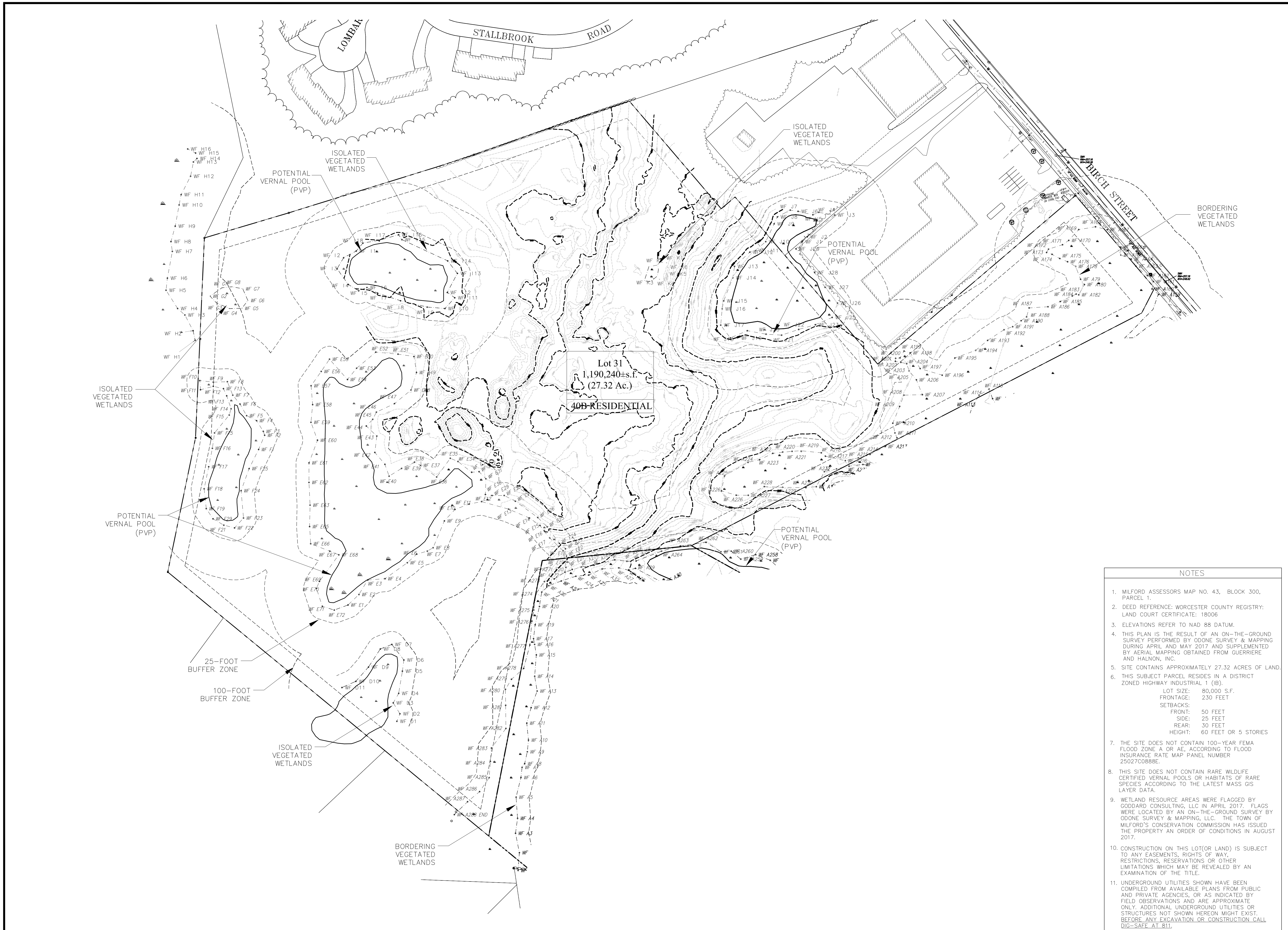
**CIVIL ENGINEER & SURVEYOR**  
Allen Engineering & Associates, Inc.  
One Charlesview Road, Suite 2  
Hopedale, MA 01747

**ARCHITECT**  
James S. Carr AIA & Associates, LLC  
11 Dale lane  
Malvern, PA 19355

PREPARED BY:



**ALLEN ENGINEERING**  
**& ASSOCIATES, INC.**  
Civil Engineers • Surveyors  
Land Development Consultants  
One Charlesview Road  
Suite 2  
Hopedale, Ma 01747  
(508) 381-3212 • Phone  
www.allen-ea.com



Lot 31  
1,190,240 s.f.  
(27.32 Ac.)  
40B-RESIDENTIAL

- NOTES
- MILFORD ASSESSORS MAP NO. 43, BLOCK 300, PARCEL 1.
  - DEED REFERENCE: WORCESTER COUNTY REGISTRY; LAND COURT CERTIFICATE: 18006
  - ELEVATIONS REFER TO NAD 88 DATUM.
  - THIS PLAN IS THE RESULT OF AN ON-THE-GROUND SURVEY PERFORMED BY ODONE SURVEY & MAPPING DURING APRIL AND MAY 2017 AND SUPPLEMENTED BY AERIAL MAPPING OBTAINED FROM GUERRIERE AND HALLGREN, INC.
  - SITE CONTAINS APPROXIMATELY 27.32 ACRES OF LAND.
  - THIS SUBJECT PARCEL RESIDES IN A DISTRICT ZONED HIGHWAY INDUSTRIAL 1 (IH).  
LOT SIZE: 80,000 S.F.  
FRONTAGE: 230 FEET  
SETBACKS:  
FRONT: 50 FEET  
SIDE: 25 FEET  
REAR: 30 FEET  
HEIGHT: 60 FEET OR 5 STORIES
  - THE SITE DOES NOT CONTAIN 100-YEAR FEMA FLOOD ZONE A OR AE, ACCORDING TO FLOOD INSURANCE RATE MAP PANEL NUMBER 25027C0888E.
  - THIS SITE DOES NOT CONTAIN RARE WILDLIFE CERTIFIED VERNAL POOLS OR HABITATS OF RARE SPECIES ACCORDING TO THE LATEST MASS GIS LAYER DATA.
  - WETLAND RESOURCE AREAS WERE FLAGGED BY GODDARD CONSULTING, LLC IN APRIL 2017. FLAGS WERE LOCATED BY AN ON-THE-GROUND SURVEY BY ODONE SURVEY & MAPPING, LLC. THE TOWN OF MILFORD'S CONSERVATION COMMISSION HAS ISSUED THE PROPERTY AN ORDER OF CONDITIONS IN AUGUST 2017.
  - CONSTRUCTION ON THIS LOT(OR LAND) IS SUBJECT TO ANY EASEMENTS, RIGHTS OF WAY, RESTRICTIONS, RESERVATIONS OR OTHER LIMITATIONS WHICH MAY BE REVEALED BY AN EXAMINATION OF THE TITLE.
  - UNDERGROUND UTILITIES SHOWN HAVE BEEN COMPILED FROM AVAILABLE PLANS FROM PUBLIC AND PRIVATE AGENCIES, OR AS INDICATED BY FIELD OBSERVATIONS AND ARE APPROXIMATE ONLY. ADDITIONAL UNDERGROUND UTILITIES OR STRUCTURES NOT SHOWN HEREON MIGHT EXIST. BEFORE ANY EXCAVATION OR CONSTRUCTION CALL DIG-SAFE AT 811.

LEGEND

|             |                                  |
|-------------|----------------------------------|
| --- 256 --- | EXISTING CONTOUR                 |
| --- 256 --- | PROPOSED CONTOUR                 |
| x 177.5     | EXIST. SPOT GRADE                |
| x 177.5     | PROP. SPOT GRADE                 |
| ~ ~ ~       | PROP. SURFACE WATER FLOW         |
| ⊙           | DRAINAGE MANHOLE                 |
| — D —       | DRAIN LINE                       |
| •           | UTILITY POLE                     |
| GW          | GUY WIRE                         |
| — OHW —     | OVERHEAD WIRES                   |
| — ETC —     | EROSION CONTROL                  |
| — ETC —     | ELECTRIC, TELEPHONE & CABLE LINE |
| ⊘           | STONE WALL                       |
| EOP         | EDGE OF PAVEMENT                 |
| FND.        | FOUND                            |
| N/F         | NOW OR FORMERLY                  |
| DH          | DRILLHOLE                        |
| I.P.        | IRON PIPE/IRON PIN               |
| A.P.        | ASSESSORS PARCEL                 |
| BK. PG.     | DEED BOOK/PAGE                   |
| • B         | BOLLARD                          |
| ▭           | BUILDING                         |
| ~ ~ ~       | EXISTING TREE LINE               |
| ~ ~ ~       | EDGE OF WETLAND                  |

PREPARED FOR: **88 CORP.**  
31 Whitewood Road  
Milford, MA 01757

TITLE:  
**EXISTING CONDITIONS PLAN**  
For  
**Birch Street Place**  
In  
**Milford, MA 01757**

PREPARED BY:



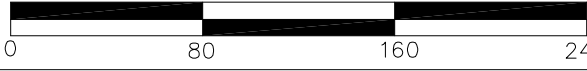
**ALLEN ENGINEERING & ASSOCIATES, INC.**  
Civil Engineers - Surveyors  
Land Development Consultants

One Charlesview Road  
Suite 2  
Hopedale, Ma 01747  
(508) 381-3212 • Phone  
www.allen-ea.com



PROFESSIONAL ENGINEER

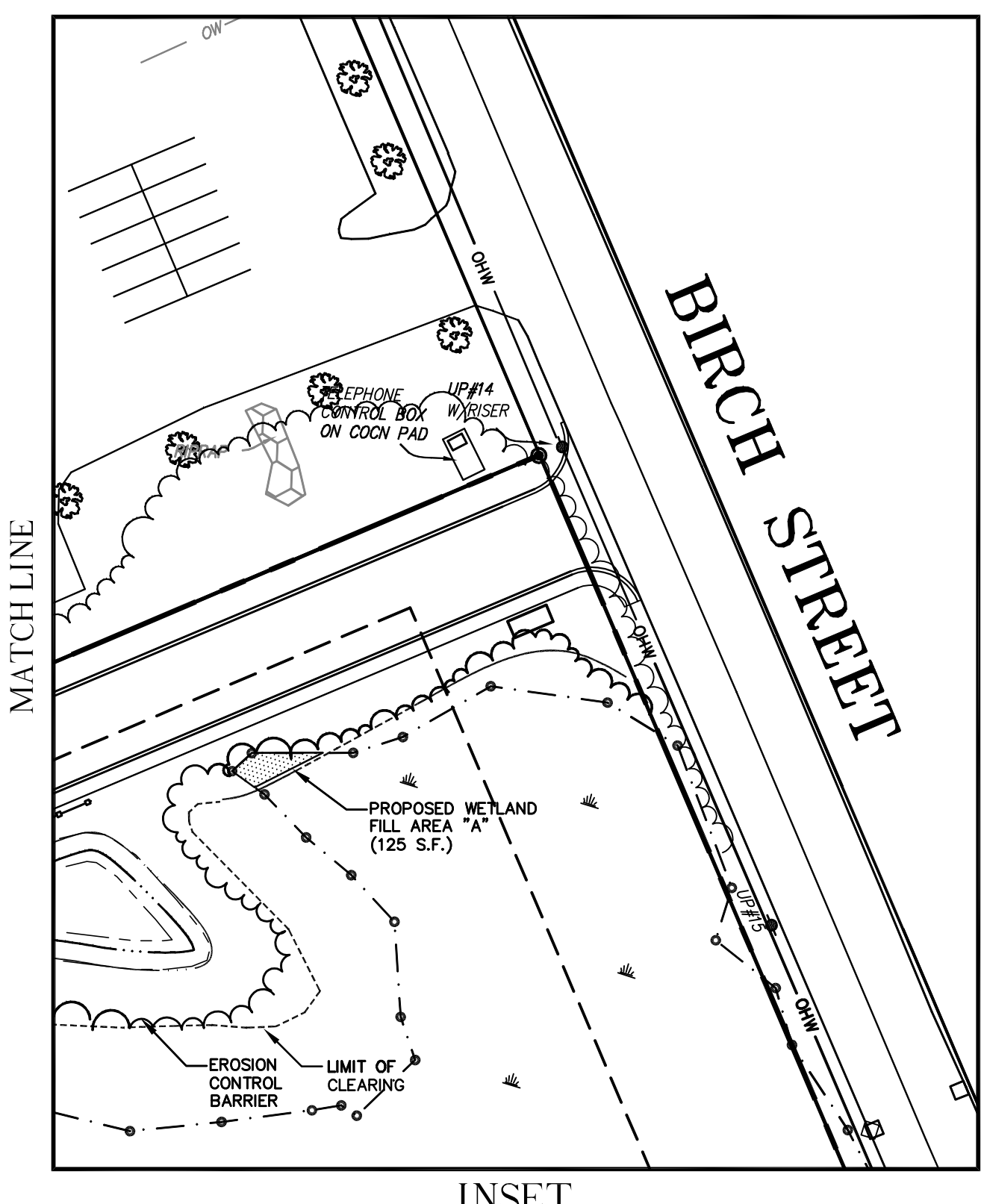
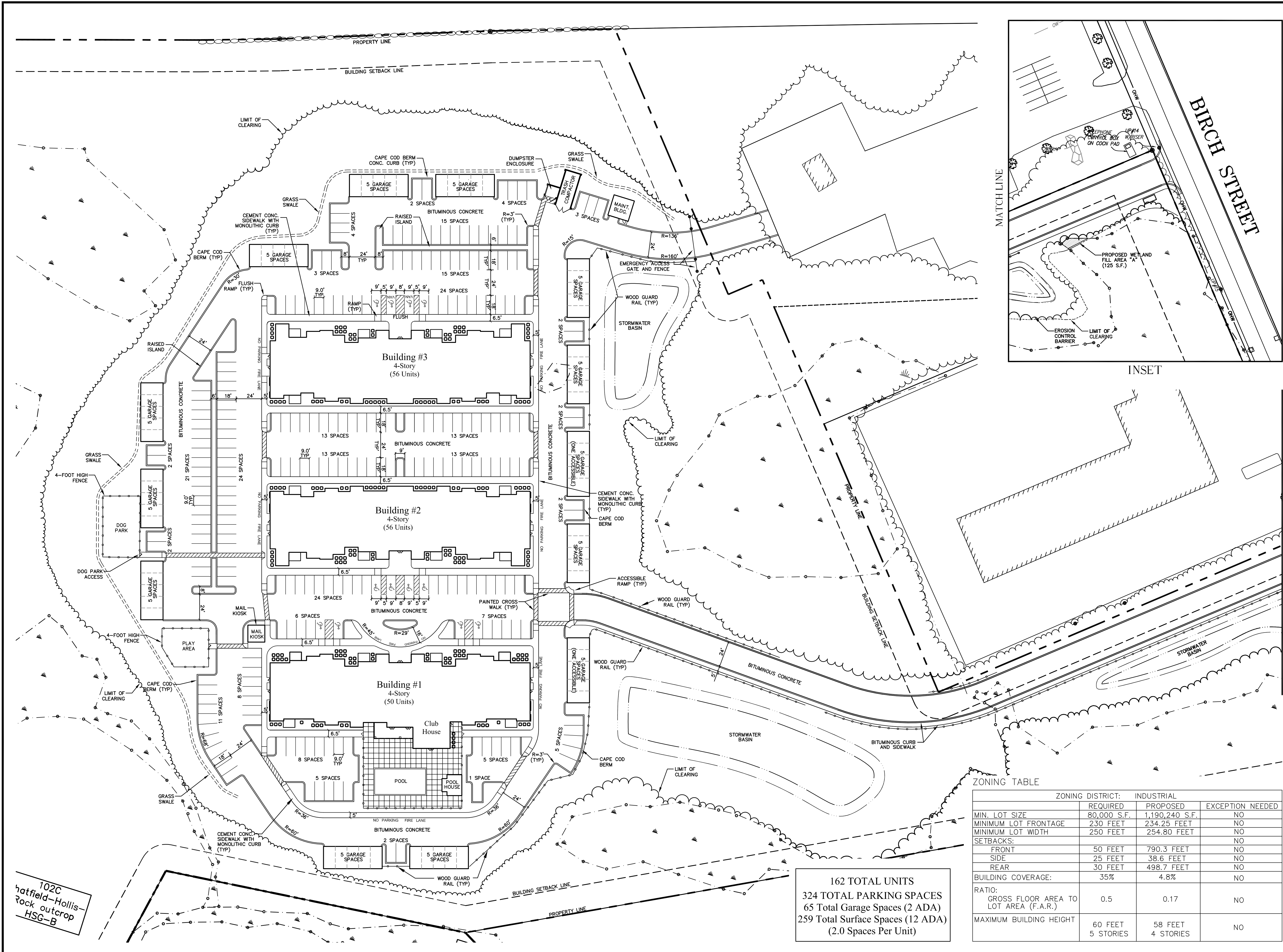
SCALE: 1"=80 FEET



DATE: **June 8, 2020**

REVISIONS

| # | DATE | DESCRIPTION | INIT |
|---|------|-------------|------|
|   |      |             |      |
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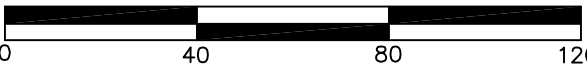
- LEGEND**
- 256--- EXISTING CONTOUR
  - 256--- PROPOSED CONTOUR
  - x 177.5 EXIST. SPOT GRADE
  - x 177.5 PROP. SPOT GRADE
  - ~ ~ ~ PROP. SURFACE WATER FLOW
  - ⊙ DRAINAGE MANHOLE
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  - STONE WALL
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  - FND. FOUND
  - N/F NOW OR FORMERLY
  - DH DRILLHOLE
  - I.P. IRON PIPE/IRON PIN
  - A.P. ASSESSOR'S PARCEL
  - BK. PG. DEED BOOK/PAGE
  - B BOLLARD
  - ▭ BUILDING
  - ~ ~ ~ EXISTING TREE LINE
  - EDGE OF WETLAND

PREPARED FOR: **88 CORP.**  
**31 Whitewood Road**  
**Milford, MA 01757**

TITLE:  
**PARKING & LAYOUT PLAN**  
 For  
**Birch Street Place**  
 In  
**Milford, MA 01757**

PREPARED BY:  
  
**ALLEN ENGINEERING & ASSOCIATES, INC.**  
 Civil Engineers - Surveyors  
 Land Development Consultants  
 One Charlesview Road  
 Suite 2  
 Hopedale, MA 01747  
 (508) 381-3212 • Phone  
 www.allen-ea.com

  
 PROFESSIONAL ENGINEER

SCALE: 1"=40 FEET  


DATE: **June 8, 2020**

REVISIONS

| # | DATE | DESCRIPTION | INIT |
|---|------|-------------|------|
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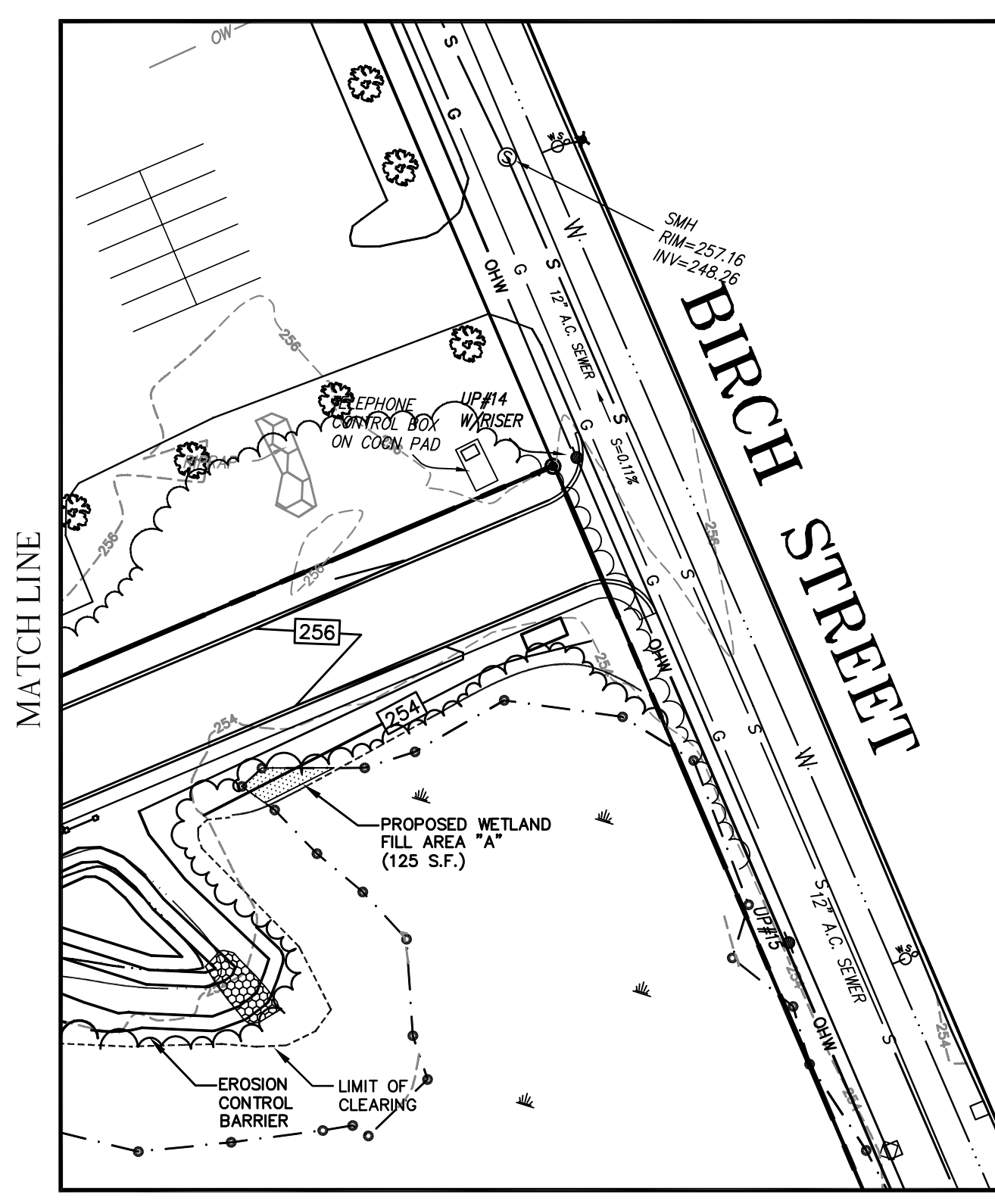
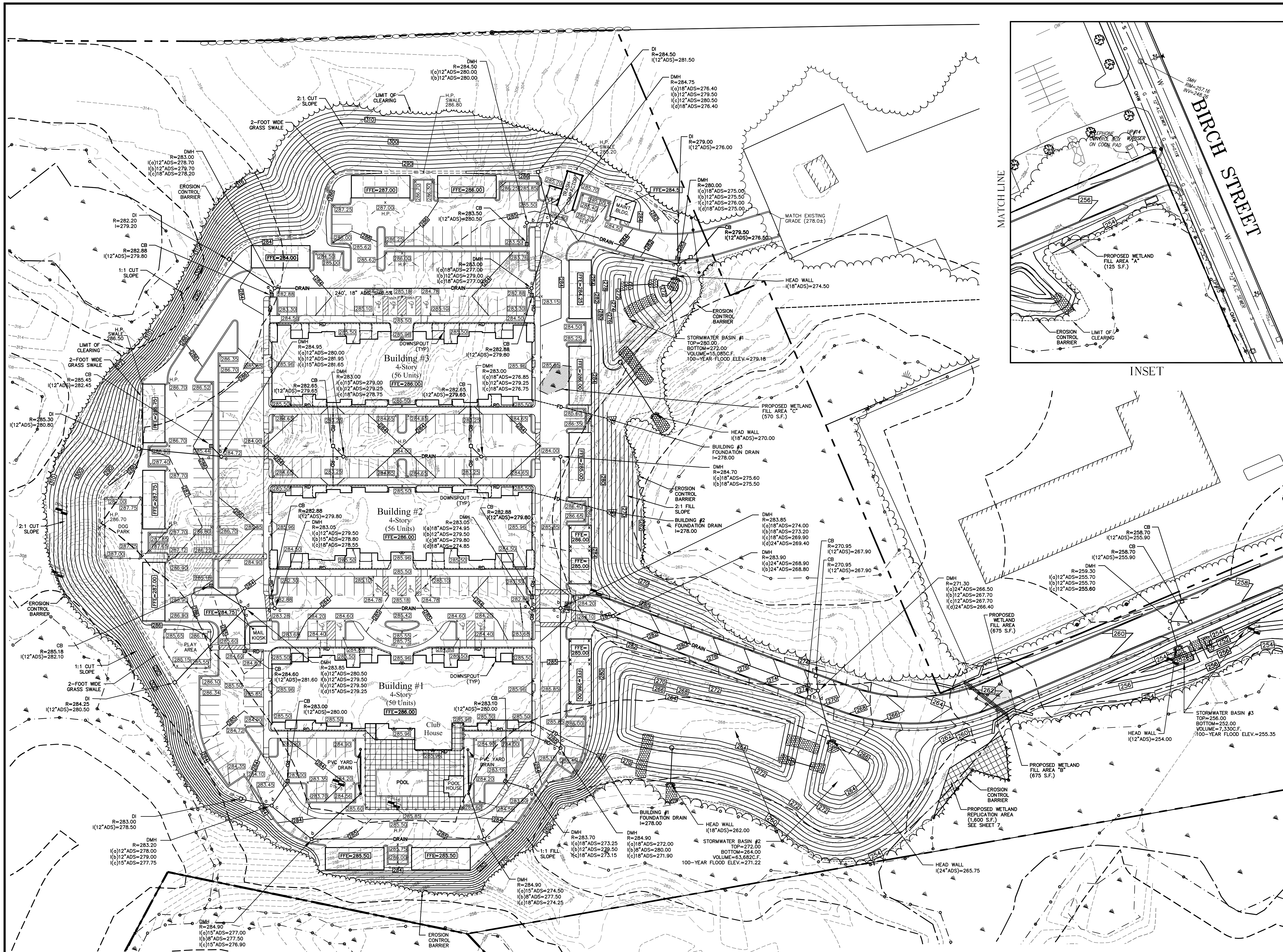
JOB NO: 00025 SHEET: **3** of 10

**162 TOTAL UNITS**  
**324 TOTAL PARKING SPACES**  
**65 Total Garage Spaces (2 ADA)**  
**259 Total Surface Spaces (12 ADA)**  
**(2.0 Spaces Per Unit)**

**ZONING TABLE**

|                                       | ZONING DISTRICT: INDUSTRIAL |                      |                  |
|---------------------------------------|-----------------------------|----------------------|------------------|
|                                       | REQUIRED                    | PROPOSED             | EXCEPTION NEEDED |
| MIN. LOT SIZE                         | 80,000 S.F.                 | 1,190,240 S.F.       | NO               |
| MINIMUM LOT FRONTAGE                  | 230 FEET                    | 234.25 FEET          | NO               |
| MINIMUM LOT WIDTH                     | 250 FEET                    | 254.80 FEET          | NO               |
| SETBACKS:                             |                             |                      |                  |
| FRONT                                 | 50 FEET                     | 790.3 FEET           | NO               |
| SIDE                                  | 25 FEET                     | 38.6 FEET            | NO               |
| REAR                                  | 30 FEET                     | 498.7 FEET           | NO               |
| BUILDING COVERAGE:                    | 35%                         | 4.8%                 | NO               |
| RATIO:                                |                             |                      |                  |
| GROSS FLOOR AREA TO LOT AREA (F.A.R.) | 0.5                         | 0.17                 | NO               |
| MAXIMUM BUILDING HEIGHT               | 60 FEET<br>5 STORIES        | 58 FEET<br>4 STORIES | NO               |

102C Hatfield-Hollis Rock outcrop HSG-B



**LEGEND**

- 256 --- EXISTING CONTOUR
- 256 --- PROPOSED CONTOUR
- x 177.5 EXIST. SPOT GRADE
- x 177.5 PROP. SPOT GRADE
- ~ PROP. SURFACE WATER FLOW
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- BK. PC DEED BOOK/PAGE
- B BOLLARD
- ▭ BUILDING
- EXISTING TREE LINE
- EDGE OF WETLAND

PREPARED FOR: **88 CORP.**  
 31 Whitewood Road  
 Milford, MA 01757

TITLE:  
**GRADING, DRAINAGE & EROSION CONTROL PLAN**  
 For  
**Birch Street Place**  
 in  
 Milford, MA 01757

PREPARED BY:  
  
**ALLEN ENGINEERING & ASSOCIATES, INC.**  
 Civil Engineers - Surveyors  
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 (508) 381-3212 • Phone  
 www.allen-ea.com

  
 PROFESSIONAL ENGINEER

SCALE: 1" = 40 FEET

DATE: **June 8, 2020**

| REVISIONS |      |             |
|-----------|------|-------------|
| #         | DATE | DESCRIPTION |
|           |      |             |
|           |      |             |
|           |      |             |

JOB NO: 00025 SHEET: **4 of 10**



**Agenda Item # 10**



## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757  
508-634-2317 Fax 508-473-2394  
mdean@townofmilford.com

OFFICE OF PLANNING  
AND ENGINEERING

Michael Dean, P.E.  
Town Engineer

### M E M O R A N D U M

---

TO: Mr. Michael Giampietro, Chairman – Conservation Commission  
FROM: Michael Dean, P.E.  
DATE: August 12, 2020  
SUBJECT: **Rt 85 Realty Corporation – 26 Beaver Street**  
**Request for Determination of Applicability (RDA) - Riverfront**

---

The RDA filing is to determine if there is “Riverfront” associated with three parcels of land. The first parcel is referred to as 26 Beaver Street (Sheet 44, Block 0, Lot 25), second parcel is Assessors Sheet 44, Block 0, Lot 23C & the third Parcel is Sheet 44, Block 0, Lot 23B, combined for a total of Approximately 5.57 Acres. The Applicant is Rt. 85 Realty Corporation, PO Box 444, Mendon Ma, 01756.

The parcels are located at the south east corner of the intersection of Beaver Street and Medway Street (Rt. 109) and are adjacent to the on ramp to Rt. 495 South. Along the northern, eastern and southern borders of the parcels there are resource areas, Bordering Vegetated Wetlands and a stream. The stream shows as a Perennial Stream (dark blue line) on the USGS Base Maps. This dark blue line is one of the criteria in determining if the stream is in fact a “River” which then in turn established whether there is “riverfront” associated with the stream. As we know riverfront area extends 200-feet horizontally, in both directions, from the rivers mean annual high-water mark (MAHWM). This 200-foot riverfront can be impactful towards the development of land.

The RDA that has been filed is to determine if the stream is a river and then in turn has riverfront, as the riverfront would extend across portions of the three parcels.

The Documents submitted take the position that this section of the stream (associated with the parcels) is a manmade section that was re-routed for the construction of Route 495 and ramps, and therefore is not a River and in turn there is no riverfront. The information submitted refers to a section of the Wetlands Protection act that states “*Human-made canals (e.g., the Cape Cod Canal and canals diverted from rivers in Lowell and Holyoke) and mosquito ditches associated with coastal rivers do not have riverfront areas.*”

The applicant's theory is based on this re-routed section as being classified as a "Human-made Canal".

The wetlands protection act does not appear to have a definition of "Human-made canal" or a definition of "canal".

My recommendations are as follows:

1. Have the applicant submit additional documentation from the DEP that substantiates their theory, that this is in fact is classified as a Human-made "Canal" and therefore there is no riverfront. Then the commission could issue a Negative Determination, if they so choose, which in turn would set this area as not having riverfront.
2. The commission could issue a positive determination which would essentially say the commission is not in agreement with the submitted documents / theory (Human-made canal" and therefore this section has riverfront.

If the applicant is willing to seek additional information / ruling from DEP, then the hearing could be continued. If the applicant is not willing to seek the information from DEP / continue the hearing, then I would recommend issuing a positive determination. The applicant could then appeal the decision to the DEP which would force some type of ruling in this matter.

September 9, 2020

Milford Conservation Commission  
Milford Town Hall  
52 Main Street  
Milford, MA 01757

**RE: Review of “Human-made Canal” Definition  
Supplemental Material for RDA  
Beaver Street, Milford MA  
Map: 44, Lots: 25, 23C, 23B**

Dear Milford Conservation Commission:

Goddard Consulting, LLC is pleased to submit this review of the definition of “Human-made canal” as provided in the MA Wetlands Protection Act Regulations [310 CMR 10.58(2)(a)1.g.]. This review is submitted on behalf of the applicant, Rte. 85 Realty Corporation. For this review I conducted a review of adjudicatory appeals through the MassDEP Office of Appeals and Dispute Resolution (“OADR”) related to this topic.

The titles of documents enclosed are as follows:

- In the Matter of Robert Zeraschi. (DEP Docket No. 2006-115; DALA No. DEP-06-939) “Recommended Final Decision,” 6-12-08
- In the Matter of Robert Zeraschi. “Final Decision,” 12/8/08
- In the Matter of Robert Zeraschi. “Final Decision on Reconsideration,” 4/1/09
- In the Matter of John Soursourian. (DEP Docket No. 2013-028) “Final Decision,” 6/13/14.

#### **Commentary**

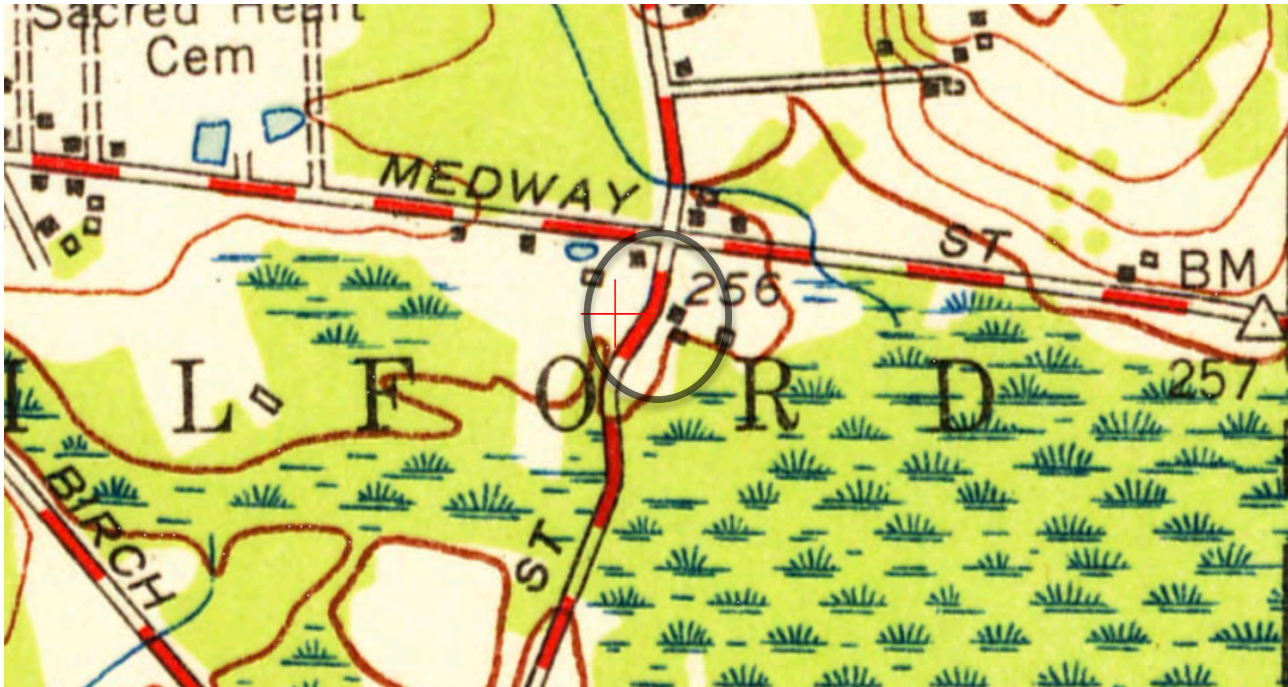
The Matter of Robert Zeraschi provides a thorough analysis on how DEP OADR Presiding Officers and DEP Commissioners have interpreted 310 CMR 10.58(2)(a)1.g. regarding human-made canals. I have provided copies of the initial “Recommended Final Decision,” along with the “Final Decision” and subsequent “Final Decision on Reconsideration” so the Commission can understand the arguments behind the ultimate conclusions. I also provide the most recent case involving this matter (In the Matter of John Soursourian). This case is notable in that the Final Decision from Zeraschi is recently (2014) cited as the definitive case law for interpreting this regulation. MassDEP has not produced any updated policy, guidance document or definition since this Final Decision to my knowledge.

In the Zeraschi “Final Decision on Reconsideration”: The Presiding Officer stated: *“I recommend an interpretation of the term ‘manmade canal’ to describe a watercourse that is artificially created rather than natural in origin and that continues to be operated, maintained, used, or preserved with respect to its original purpose.”* In the Soursourian decision, the Presiding Officer stated: *“In sum, Soursourian must show by a preponderance of the evidence that: (1) the watercourse was artificially created rather than natural in origin and (2) continues to be operated, maintained, used or preserved with respect to its original artificially created purpose.”* We believe that our analysis below clearly demonstrates that the watercourse was indeed artificially created (during the construction of Route 495), and that it is presently preserved with respect to its originally artificially created purpose (to create drainage under Route 495).

**History of the Stream**

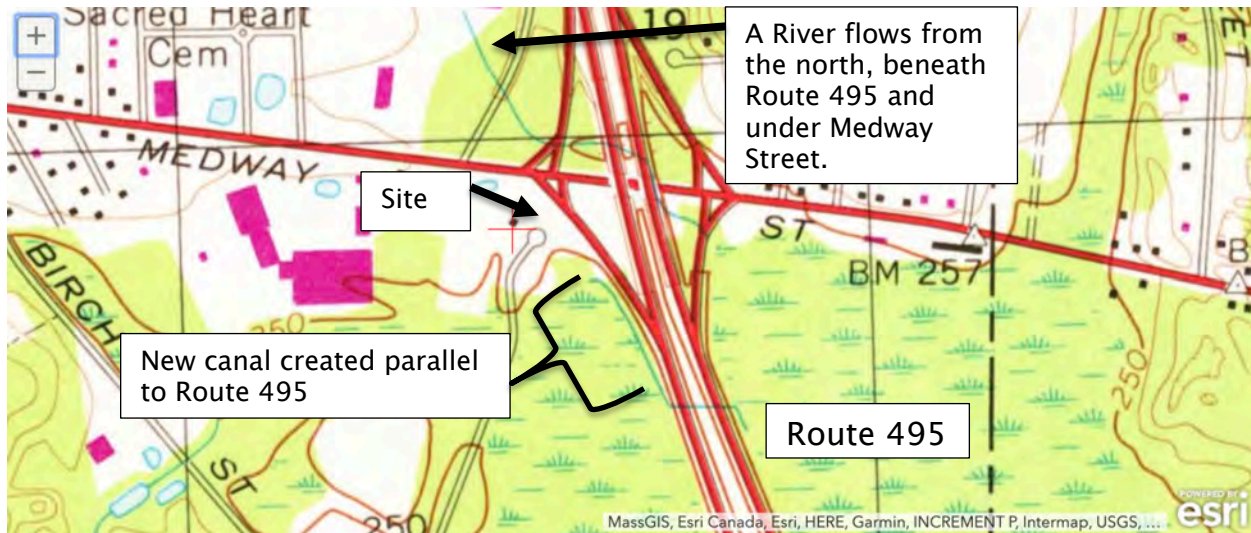
The following discussion will present evidence for why the stream is “artificially created rather than natural in origin.” The stream appears to be human-made due to its linear orientation and consistency in channel depth, height and elevation. Its linear orientation is due to its creation beside Route 495.

Between 1953 and 1979, Route 495 was built and disturbed the natural hydrology of the surrounding land. Before Route 495, land parcels 25, 23C, and 23B had no stream (see **Map 1**). An existing River flows from the north (top of **Map 1**) beneath a road and eventually beneath Medway Street, off to the east of the sites.



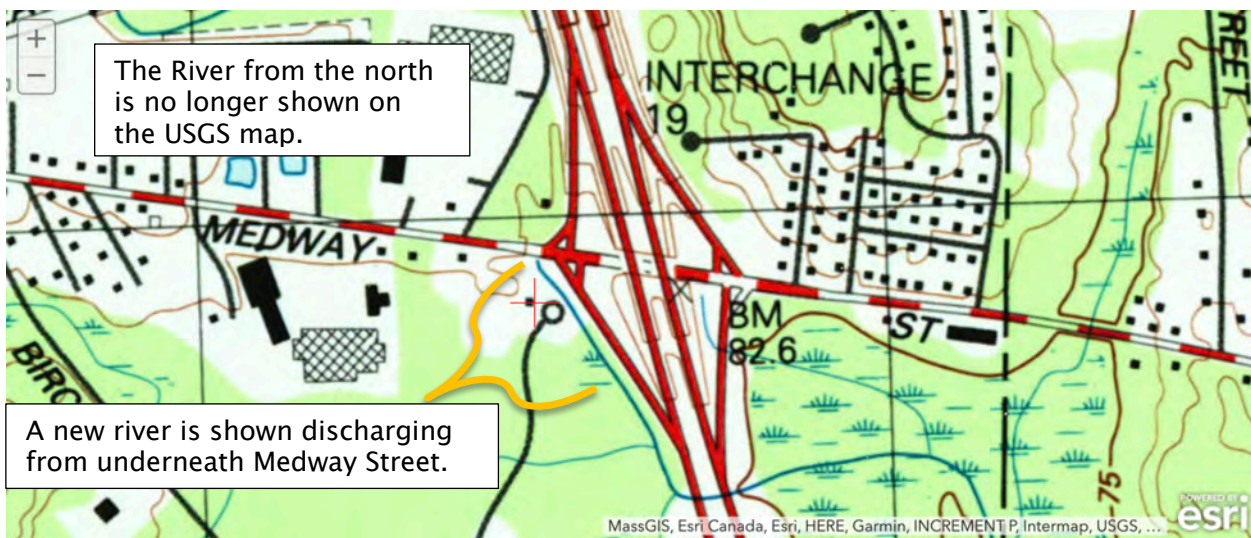
Map 1 – 1953 USGS Map. The three lots are located in the vicinity of the black circle.

After the construction of Route 495 (see **Map 2**), the River that flows from the north follows its original path, flowing beneath what is now Route 495 and eventually under Medway Street. A newly created stream flows parallel to the highway through Lot 23B, indicating that the construction of the highway directly involved the creation of the stream. With this being the case, the stream is best classified as a human-made canal.



Map 2 - 1979 USGS topo map.

Furthermore, by 1987, the river that once flowed from the north of Medway Street and under Route 495 (see **Map 2**) had been removed from the USGS map. A new river was depicted on the USGS map on-site that discharges from underneath Medway Street onto Lot 25. (see **Map 3**).



Map 3 - 1987 USGS topo map.

In its present condition, the stream continues to function as intended with its original artificially created purpose: to provide a drainage connection under Route 495.

The WPA Regulations [310 CMR 10.58(2)(a)1.g.] clearly state that human-made canals do not have riverfront areas:

*Human-made canals (e.g., the Cape Cod Canal and canals diverted from rivers in Lowell and Holyoke) and mosquito ditches associated with coastal rivers do not have riverfront areas.*

### Conclusions

The stream flowing within portions of Lot 25, 23C, and 23B was human-made and built as a result of Route 495 construction. Therefore, the stream was artificially created rather than natural in origin. The stream continues to function with its intended purpose of providing for drainage under Route 495. With this in mind, the subject stream meets the definition of “human-made canals” (as described in Zeraschi and reaffirmed in Soursourian) and accordingly does not have Riverfront Area.

The applicant therefore respectfully requests that the Commission a negative determination for Riverfront Area on Lot 25, 23C, and 23B.

If there are any questions concerning this submission, please do not hesitate to contact us.

Sincerely,

Goddard Consulting, LLC

by 

Dan Wells, M.S.  
Senior Wildlife Biologist & Wetland Scientist



## View Decision Archive

**Publication** Massachusetts DEP Reporter (1994-present)

**Name:**

**Decision Name:** ROBERT ZERASCHI

**Case**

15 DEPR 184 (2008)

**Citation:**

**Decision**

**Detail:**

In the Matter of ROBERT ZERASCHI

Docket No. DEP-06-939

File No. SDA

Reading

June 12, 2008

Natalie S. Monroe, Administrative Magistrate

### RECOMMENDED FINAL DECISION

The petitioner, Robert Zeraschi, is entitled to prevail in his appeal from the Department of Environmental Protection's determination that his property contains riverfront area pursuant to 310 CMR 10.58; the water body behind Mr. Zeraschi's property is a manmade canal within the meaning of 310 CMR 10.58(2)(a)(1)(g) and, thus, the water body has no riverfront area. The positive riverfront area-related determinations in the Department's superseding determination of applicability therefore must be vacated.

In this appeal, Robert Zeraschi challenges the Department of Environmental Protection's determination that a waterway known as Walkers Brook is not a manmade canal within the meaning of the Wetlands Regulations, 310 CMR 10.00, et seq. For the reasons set forth below, I conclude that the portion of Walkers Brook that was built as a drainage channel is a manmade canal under the regulations.

### Statutory Framework

Under the Wetlands Protection Act, MGL c. 131, § 40 (the "Wetlands Protection Act" or the "Act"), any person who intends to "remove, fill, dredge or alter" a wetland resource area must obtain a permit from the local conservation commission. See MGL c. 131, § 40; 310 CMR 10.05(4). If a person is unsure whether his property contains wetland resource areas within the meaning of the Act or the Wetlands Regulations, he may file with the conservation commission a "request for a determination of applicability." See 310 CMR 10.05(3)(a). The commission then must determine whether the property contains any resource areas and, if so requested, also must identify the boundaries of those areas. See 310 CMR 10.05(3)(b).

The Wetlands Regulations also limit work within a one-hundred-foot "buffer zone" to wetland resource areas. Thus, a person also may submit a request for a determination of applicability to confirm the boundaries of any buffer zones on his property. See 310 CMR 10.05(3)(a)(2).

This case focuses on one wetland resource: riverfront area. The Wetlands Protection Act defines a riverfront area as:

that area of the land situated between a river's mean annual high-water line and a parallel line located two hundred feet away, measured outward horizontally from the river's mean annual high-water line.

MGL c. 131, § 40 (fourteenth para.).<sup>1</sup> Unless otherwise exempted, moreover, every river and perennial stream has an associated riverfront area.<sup>2</sup> The exemption at issue here applies to manmade canals. That exemption states:

[m]anmade canals (e.g., the Cape Cod Canal and canals diverted from rivers in Lowell and Holyoke) and mosquito ditches associated with coastal rivers do not have riverfront areas.



310 CMR 10.58(2)(a)(1)(g).

### Procedural History

Robert Zeraschi owns two adjacent parcels of land (collectively, the “property”) located at 10 Torre Street in Reading. On March 8, 2006, Mr. Zeraschi filed a request for determination of applicability with the Reading Conservation Commission. In his request, Mr. Zeraschi asked the Conservation Commission to determine the jurisdictional status of a waterway known as Walkers Brook that flows behind his property and to confirm the locations of the inland banks on the brook. See Request for Determination of Applicability, dated March 8, 2006 (“RDA”), at Narrative pp. 1, 4. See also 310 CMR 10.54 (regulation pertaining to “inland bank” resource areas). In his request, moreover, Mr. Zeraschi took the position that while Walkers Brook meets the definition of a perennial stream under the Wetlands Regulations, it also is a manmade canal within the meaning of 310 CMR 10.58(2)(a)(1)(g). See RDA at Narrative p. 4. Mr. Zeraschi therefore contended that Walkers Brook does not have an associated riverfront area. *Id.* at 1-3.<sup>3</sup>

On March 27, 2006, the Conservation Commission issued a determination of applicability in which it found that Walkers Brook is a perennial stream with inland banks on both sides. The commission rejected Mr. Zeraschi’s claim that the brook is a manmade canal and therefore found that it has an associated riverfront area, a portion of which extends onto Mr. Zeraschi’s property. The commission further found that Walkers Brook contains “land under water bodies” pursuant to 310 CMR 10.56, and that it has “bordering land subject to flooding” pursuant to 310 CMR 10.57. See Determination of Applicability, dated March 27, 2006, at Attachment pp. 4-5. The Conservation Commission did not identify the boundaries of these resource areas; it did determine, however, that Mr. Zeraschi’s property contains buffer zones to the inland banks. *Id.* at 4.

Mr. Zeraschi appealed the Conservation Commission’s findings to the Department of Environmental Protection (the “DEP”). On July 5, 2006, the DEP affirmed all of the commission’s findings. See Cover Letter to Superseding Determination of Applicability, dated July 5, 2006, at p. 1. This appeal followed.

In his notice of appeal, Mr. Zeraschi challenged just one aspect of the DEP’s superseding determination of applicability: whether his property contains riverfront area pursuant to 310 CMR 10.58. Specifically, Mr. Zeraschi asserted that Walkers Brook is a manmade canal within the meaning of 310 CMR 10.58(2)(a)(1)(g) and therefore has no riverfront area. See Request for Adjudicatory Hearing, dated July 19, 2006. Mr. Zeraschi did not appeal any of the DEP’s other findings. *Id.* (“The applicant concurs that Walkers Brook is a perennial stream and has associated Bank and Land Under Water resource areas and has an associated 100-foot buffer zone in the vicinity of the subject lot”).

After “pre-screening” at the DEP, the appeal was transferred to the Division of Administrative Law Appeals on October 30, 2006. I held a pre-hearing conference on February 20, 2007,<sup>4</sup> during which the parties asked for a stay for thirty days in order to explore the possibility of settlement. I granted the parties’ request and stayed the case until March 20, 2007. On March 23, 2007, Mr. Zeraschi’s counsel reported that settlement was unlikely and asked to lift the stay. Consequently, on March 30, 2007, I issued an order establishing a schedule for both pre-filed and live testimony.

Pursuant to the established schedule, Mr. Zeraschi submitted the pre-filed testimony of two witnesses: Curtis Young, a professional wetlands scientist; and Paul Finocchio, a registered land surveyor. The Reading Conservation Commission proffered testimony from its Conservation Administrator, Frances Fink, and the DEP submitted pre-filed testimony from two of its environmental analysts, Jill Provencal and Heidi Davis.

The live portion of the hearing was held on July 30, 2007. Each party filed a closing brief on September 20, 2007, and a reply brief on October 5, 2007, after which the record closed.

### Findings of Fact

Based on the evidence presented, I make the following findings of fact. Additional findings of fact are included in the discussion section of this decision, as necessary.

#### I. Mr. Zeraschi’s Property.

As previously discussed, Robert Zeraschi owns two adjacent parcels of land (collectively, the “property”) in a residential neighborhood in Reading. Young Dir. at ¶ 10; Young Exh. 17.<sup>5</sup> Torre Street forms the northern boundary of the property, while residential lots are located to the east and west. Young Exh. 17; Finocchio Exh. 2. The back—or southern border—of the property abuts a row of three small, narrow lots. *Id.* The southern boundary of these three lots abuts a waterway that the parties refer to as Walkers Brook. See, e.g., Young Exh. 17. Because the waterway is central to this appeal, I discuss it in more detail in the next section.

#### II. The Disputed Waterway.

Before the mid-1940s, no water body flowed behind Mr. Zeraschi's property; the land behind his was upland. In the early to mid-1940s, the Commonwealth built a drainage system in Reading to drain marshes that caused extensive area flooding. The main channel of this drainage system (the "Main Channel") was placed behind Mr. Zeraschi's property. When it was first built, and for decades thereafter, the Main Channel was referred to as a canal (and, in at least one instance, as a drainage ditch). At some point long after it was built, the Main Channel started being treated as part of a longer waterway called Walkers Brook.

#### A. The Construction and Location of the Main Channel.

Lake Quannapowitt is located in Wakefield, close to the Reading town line. Fink Exhs. 3, 5. Until the mid-1940s, there were hundreds of acres of marshland along the border of Wakefield and Reading, near the western shoreline of Lake Quannapowitt. Fink Exhs. 20, 21. Four streams traversed the marshes and then emptied into Lake Quannapowitt; these streams were known as Ash Street Brook, Eaton Street Brook, John Street Brook and Salem Street Brook. See, e.g., Finocchio Exh. 8.6 Especially during heavy runoff, water from the marshes and streams caused extensive flooding on the Reading side of Lake Quannapowitt. See, e.g., Fink Exhs. 20, 21, 23.

In 1939, the Commonwealth authorized the construction of a drainage system to drain the marshes and divert water flows around Lake Quannapowitt. Finocchio Exh. 8; Fink Exhs. 21, 22. The drainage system was completed in the mid-1940s. It was comprised of the Main Channel, which captured and re-routed water around Lake Quannapowitt; three smaller channels that connected to the Main Channel; and dikes around portions of Lake Quannapowitt to further separate the lake from the wetlands. Id.

The Main Channel starts between Cross Street and Brook Street in Reading, where it captures the flow of Ash Street Brook (as it was called in 1939), and prevents the stream from flowing into Lake Quannapowitt. See Finocchio Exh. 8. The Main Channel then runs northeast for approximately a mile and a half, traveling past the western side of Lake Quannapowitt. See, e.g., Finocchio Exh. 8; Fink Exh. 3. It then turns to the east and travels around the northern tip of the lake. Id. It continues past the lake for a short distance and then empties into the Saugus River, below the outlet of Lake Quannapowitt. Id.7

The first segment of the Main Channel (roughly twenty-five hundred feet) was built over a branch of the former Ash Street Brook. Finocchio Exh. 8.8 The rest was dredged from marshes and upland, where no stream previously existed. See, e.g., id.; Young Exhs. 8-10; Fink Exh. 21. When it was first built, moreover, the Main Channel was lined with timber and was equipped with stop planks that could be used to control water flow and water level. See, e.g., Finocchio Exh. 8; Fink Exh. 21; Young Dir. at ¶ 16.9 Water flows in the channel all year; water depth has been observed to be between twelve and twenty-four inches deep at various times. Young Dir. at ¶ 12.

Mr. Zeraschi's property is located near the northeast stretch of the Main Channel between Harvest Road and Salem Street, shortly before the channel turns to the east. Young Exh. 17; Finocchio Exh. 8. The section of the channel that runs behind Mr. Zeraschi's property—that is, the section between Harvest Road and Salem Street—was built in an area that had been upland. See, e.g., Provencal Test.; Young Dir. at ¶16; Fink Exh. 21 (describing the area at issue as "upland"); Young Exhs. 8-10 (maps and drainage plans from 1893, 1923, and 1944 depicting area in question as upland, without any streams or wetlands). The sides of the channel in this area are steep and are reinforced with concrete in places. The bottom is comprised primarily of muck, peat and sediments; some segments are concrete. Fink Dir. at ¶ 17(f); Fink Test.

Finally, the Main Channel flows roughly parallel to the southern border of Mr. Zeraschi's property. Young Dir. at ¶¶ 10, 11; Young Exh. 17. At its closest point, the waterway is approximately twenty feet from Mr. Zeraschi's property line; at its furthest point, it is roughly ninety feet away. See Finocchio Exh. 2; Fink Dir. at ¶ 3.

#### B. Renovations to the Main Channel.

The Main Channel has been re-routed twice. First, a section between John Street and Line Road was re-routed when Reading expanded its former landfill. Second, portions north of Salem Street were re-routed to build Route 128.

#### C. The Naming of the Main Channel and the Full Reach of Walkers Brook.

Before the Main Channel was built, there was no "Walkers Brook" in Reading. See, e.g., Fink Exhs. 19, 25; Young Exhs. 9-10; Finocchio Exh. 8. For several decades after the project was completed, moreover, maps and plans referred to the channel as the "Reading Drainage Canal," the "Reading Drain Canal," the "canal" and the "bypass channel." See, e.g., Young Exhs. 8, 12, 15-23. The first reference to "Walkers Brook" in evidence is a 1981 Flood Insurance Rate Map for the Town of Reading. Fink Exh. 5. This and one subsequent map depict Walkers Brook as a waterway made up of (1) the upper reaches of the former Ash Street Brook and (2) the Main Channel. See Fink Exhs. 3, 5. The maps show Walkers Brook beginning where the former Ash Street Brook originated, in a swamp west of

Main Street in Reading. It then follows the same path as the former Ash Street Brook, flowing southeast under Cross Street until it connects to the Main Channel. *Id.*

Other maps continue to refer to the Main Channel as the "Canal" and the "Reading Drainage Canal." See Young Exhs. 17, 19 (1988 Flood Insurance Rate Map for the Town of Wakefield; 2007 Assessors Map).

### Discussion

#### I. Is Walkers Brook a River?

In his closing brief, Mr. Zeraschi argues that Walkers Brook is not a perennial stream or river within the meaning of 310 CMR 10.58. Mr. Zeraschi did not raise this claim in his notice of appeal. See Request for Adjudicatory Hearing, dated July 18, 2006. Nor did he identify it as an issue for adjudication at the pre-hearing conference. See Pre-Hearing Conference Report, dated March 30, 2007, at p. 1. See also Petitioner's Status Report, dated March 20, 2007 ("This matter involves ... the issue of whether the Property contains Riverfront Area or whether Walkers Brook is a canal"). Indeed, at the start of this proceeding, Mr. Zeraschi conceded that Walkers Brook qualifies as a perennial stream, and therefore as a river, under the Wetlands Regulations. See Request for Adjudicatory Hearing, dated July 18, 2006, at p. 2 ("The applicant concurs that Walkers Brook is a perennial stream"). I therefore do not need to consider Mr. Zeraschi's new argument that the waterway is not a perennial stream or river.

#### II. Is Walkers Brook a Manmade Canal?

As set forth above, the fundamental dispute in this case is whether Walkers Brook qualifies as a manmade canal as that term is used in 310 CMR 10.58(2)(a)(1)(g). That provision reads:

[m]anmade canals (e.g., the Cape Cod Canal and canals diverted from rivers in Lowell and Holyoke) and mosquito ditches associated with coastal rivers do not have riverfront areas.

310 CMR 10.58(2)(a)(1)(g). The Wetlands Regulations do not define "manmade canal." *Id.* I therefore look to the traditional rules of statutory construction. See *Warcewicz v. Department of Environmental Protection*, 410 Mass. 548, 550, 574 N.E.2d 364, 365 (1991) (a regulation is interpreted "in the same manner as a statute, and according to traditional rules of construction"). This means that I must accord the words in 310 CMR 10.58(2)(a)(1)(g) their usual and ordinary meanings. *Id.*, citing *Nantucket Conservation Found., Inc. v. Russell Mgmt., Inc.*, 380 Mass. 212, 214, 402 N.E.2d 501 (1980). A word's "usual and accepted meanings" are derived "'from sources presumably known to the [regulation's] enactors, such as their use in other legal contexts and dictionary definitions.'" *Police Dept. of Boston v. Fedorchuk*, 48 Mass. App. Ct. 543, 548, 723 N.E.2d 41, 46 (2000), quoting *Commonwealth v. Zone Book, Inc.*, 372 Mass. 366, 369, 361 N.E.2d 1239 (1977).

Black's Law Dictionary defines a canal as "an artificial waterway used for navigation, drainage or irrigation of land." Black's Law Dictionary 186 (5th ed. 1979). The American College Dictionary defines a canal as "an artificial watercourse for navigation, irrigation, etc.," while Merriam-Webster defines it as "an artificial waterway for navigation, or for draining or irrigating land." The American College Dictionary 174 (1964); Merriam-Webster Collegiate Dictionary 164 (10th ed. 1994).

The section of Walkers Brook that was built as a drainage channel—i.e., the Main Channel—falls squarely within the above definitions. The Main Channel did not exist before the mid-1940s. It is an artificial waterway that the Commonwealth created in order to drain marshland and alleviate area flooding. Its width, depth, gradient, banks and length are all manmade. It was dredged primarily from land where no stream previously flowed. Indeed, large sections of the channel, including the portion that runs behind Mr. Zeraschi's property, were excavated from upland. See, e.g., Finocchio Exh. 8; Fink Exh. 21. I also note that the Main Channel originally was lined with timber and had stop planks to control its flow. While these details are not critical to finding that the Main Channel is a manmade canal, they further highlight the fact that it is. I also found probative, although not decisive, the fact that maps and state highway plans labeled the channel as a canal for decades after it was built; the moniker "Walkers Brook" did not appear until much later.

Moreover, the Main Channel did not replace an existing stream. It is true that the first segment of the Main Channel was built over a branch of the former Ash Street Brook. Before the canal was built, however, that branch naturally ended shortly before John Street; the Main Channel extends nearly a mile beyond John Street. Thus, it cannot be said that the Main Channel "replaced" or "re-routed" that branch. Furthermore, before the Main Channel was built, the primary branch of Ash Street Brook flowed east and emptied into Lake Quannapowitt. It strains credulity to state that the Main Channel—which travels in an entirely different direction and discharges into a different water body—is a "re-routed" version of that stream. In this regard, I expressly reject Ms. Fink and Ms. Provencal's testimony that the Main Channel is a "re-routed" stream and that Walkers Brook existed before the drainage system was built in the 1940s.

Further, I do not find persuasive the DEP and Conservation Commission's argument that the term "manmade canal" should be construed narrowly to include only those waterways that are similar to the canals listed in the Wetlands Regulations: the Cape Cod, Lowell and Holyoke canals.<sup>10</sup> Specifically, they contend that the Cape Cod Canal was built to enhance commerce by improving navigation to Cape Cod, while the Holyoke and Lowell canals divert only part of a river's flow and were designed to provide hydroelectric power to factories. Thus, they posit that a manmade canal should include only "navigation" and "diversion" canals that were built for commercial or industrial purposes.

Their claim rests on the fact that 310 CMR 10.58(2)(a)(1)(g) specifically names the Cape Cod, Lowell and Holyoke canals. In construing regulations, however, there are terms of limitation ("i.e.") and terms of expression ("e.g."). The reference to the Cape Cod, Lowell and Holyoke canals is modified by the latter term ("e.g."), which means "for the sake of an example." Black's Law Dictionary 462 (5th ed. 1979). Thus, the Cape Cod Canal and the canals diverted from rivers in Lowell and Holyoke simply are examples of manmade canals and do not exclude all other canals from 310 CMR 10.58(2)(a)(1)(g). Furthermore, aside from the three named canals, the regulations go on to exempt mosquito ditches associated with coastal rivers, which suggests that the DEP sought to broadly encompass manmade water diversions, even relatively minor ones.

In addition, the DEP and Conservation Commission's interpretation would be inconsistent with the use of "canal" elsewhere in the Wetlands Regulations. See *Singer Friedlander Corp. v. State Lottery Comm'n.*, 423 Mass. 562, 565, 670 N.E.2d 144, 146 (1996) (a regulation "should be read as a whole to produce an internal consistency"). For example, an "abutter" is defined as:

the owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including land located directly across a street, way, creek, river, stream, brook or canal.

310 CMR 10.04 (emphasis added). Similarly, "land in agriculture use" includes land used in a manner related to producing or raising agricultural products, including but not limited to land used for "canals." *Id.* See also 310 CMR 10.04(c)(1)(e) (providing that under certain circumstances related to agriculture, the construction of bypass canals do not require a wetlands permit); 310 CMR 10.04 (the "normal maintenance of land in agricultural use" includes cleaning, clearing, repairing or restoring "man-made or natural water management systems such as ... canals/channels...") (emphasis added).

The term "canal" in these provisions is not limited to navigation and diversion canals. Indeed, such a limitation would be nonsensical in the abutter provision and would render the word canal meaningless in the sections related to agriculture. By contrast, applying the plain and ordinary meaning of canal in 310 CMR 10.58 is consistent with the use of that term in the rest of the Wetlands Regulations.<sup>11</sup>

Moreover, none of the witnesses had experience regulating manmade canals; nor were they involved in drafting 310 CMR 10.58(2)(a)(1)(g). Since none of the witnesses was qualified to provide expert testimony on the meaning of "manmade canal" in the regulations, I accord no weight to their testimony concerning their personal interpretations of the term.

Finally, I recognize that "an exception from the coverage of a [regulation] is ordinarily to be construed narrowly so as to prevent the purposes of the [regulation] from being rendered ineffective." *Martin v. Rent Control Bd. of Cambridge*, 19 Mass. App. Ct. 745, 747, 477 N.E.2d 426, 428 (1985). A finding that the Main Channel is a manmade canal will not conflict with the purposes of the Wetlands Regulations. Such a determination simply means that the waterway does not have an associated riverfront area. The Main Channel still will be regulated as a river. It has inland banks, land under water bodies and bordering land subject to flooding. Any activity in, or within one hundred feet of, these resource areas must comply with the Wetlands Regulations. I also note that the Riverfront Protection Act is aimed at preserving the "natural integrity" of rivers and riverfront area. See 310 CMR 10.58 (preamble). Where a waterway is manmade, there is no "natural" river or riverfront area to preserve.

The Conservation Commission and DEP offer two alternative methods for evaluating whether a waterway is a manmade canal. First, the agencies assert that a side-by-side analysis is needed to determine whether the Main Channel is truly "like" the Cape Cod, Holyoke or Lowell canals. Second, they argue that the Main Channel is not a manmade canal because it has riverine characteristics.

#### 1. "Side-by-Side" Comparisons

Harkening back to their original argument that manmade canals must be similar to the Cape Cod, Lowell and Holyoke canals, the DEP and Conservation Commission purport to compare the Main Channel to each of these three canals and argue that, because the channel is not like any of them, it is not a manmade canal. By way of example, the two agencies assert that the Cape Cod Canal (1) is a tidal saltwater body; (2) was built to provide navigation to improve

commerce; and (3) still provides navigation for business and recreation. They contend that the Main Channel (1) is a freshwater body; (2) was not built for navigation; and (3) provides storm damage prevention and flood control. According to the DEP and Conservation Commission, because the Main Channel does not have the same characteristics as the Cape Cod Canal, it cannot be a manmade canal under the regulations.

This argument is without merit. First, as previously discussed, the manmade canal exemption is not limited to canals that are similar to the Cape Cod, Holyoke and Lowell canals. Second, the proposed "rule" is so vague that it would be subject to inconsistent and arbitrary application. For instance, the two agencies distinguish the Main Channel from the Cape Cod Canal in part because the channel is a freshwater waterway while the Cape Cod Canal is a tidal saltwater body. The arbitrariness of this distinction is highlighted by the fact that the Lowell and Holyoke canals are freshwater bodies like the Main Channel. Likewise, the agencies argue that the Main Channel is dissimilar to the Lowell and Holyoke canals because flow in the channel is not controlled by locks or gates, while the other two canals had control mechanisms. Yet, both agencies concede that flow in the Cape Cod Canal is not artificially controlled. See, e.g., *Novak v. Department of Environmental Protection*, 1995 WL 1146156, \*7 (Mass. Super. 1995) ("Inconsistent application of what is supposed to be the same standard is persuasive evidence that the agency is acting arbitrarily and capriciously and abusing its discretion").

Finally, some of the supposed distinctions are inconsistent with the evidence in this case. The DEP and Conservation Commission argue, for example, that a manmade canal cannot be fed by tributaries, while a river or stream can. However, tributaries flow into many canals in Massachusetts, including the Cape Cod Canal. See, e.g., Hearing Exhs. 1-5; *Provencal Test.*; *Davis Test.*; *Young Reb.* at ¶ 6 (rebuttal to J. Provencal testimony). In fact, the Cape Cod Canal is fed by a dendritic network of tributaries, which DEP environmental analyst Heidi Davis testified was the "hallmark" of a stream. See, e.g., Hearing Exh. 2; *Young Reb.* at ¶ 6.12

## 2. Functionality Test

As their last argument, the Conservation Commission and DEP claim that Walkers Brook (including the Main Channel) is not a manmade canal because it functions as a river and has riverine characteristics. The argument is circular. The manmade canal exemption is at issue solely because Walkers Brook is a river under the regulations. It makes no sense to then say that Walkers Brook is not a manmade canal because it is a river.

Additionally, the proposed "functionality" test does not comport with the plain language of the regulation, which exempts "manmade canals," not "manmade canals that do not function as a river." See 310 CMR 10.58(2)(a)(1)(g). Indeed, the canals listed in the regulations have the very riverine functions and characteristics that allegedly prevent the Main Channel from being a manmade canal. For instance, the Lowell and Holyoke canals "flow in a definite channel in the ground due to a hydraulic gradient..." 310 CMR 10.04. See, e.g., *Provencal Dir.* at ¶ 12. Further, the Cape Cod Canal and other recognized canals in Massachusetts are fed by tributaries and have a watershed. See, e.g., *Young Reb.* at ¶¶ 5-6 (rebuttal to J. Provencal testimony); *Young Reb.* at ¶¶ 2, 4 (rebuttal to H. Davis testimony); Hearing Exhs. 1-5. Moreover, the Cape Cod, Holyoke and Lowell canals all perform some wetlands functions, such as wildlife habitat, flood control and storm damage prevention. See, e.g., *Provencal Test.*; *Davis Test.*; *Young Reb.* at ¶ 5 (rebuttal to J. Provencal testimony).

Finally, I emphasize that the Main Channel qualifies as a river under the Wetlands Regulations and still will be regulated as one, with inland banks, land under water, bordering land subject to flooding, and associated buffer zones. A determination that the Main Channel is a manmade canal simply means that it does not have any riverfront area.

## Conclusion and Disposition

For the reasons set forth above, I conclude that the portion of Walkers Brook that was built as a drainage channel—i.e., the Main Channel—is a manmade canal within the meaning of the Wetlands Regulations. I therefore vacate the findings in the superseding determination of applicability that (1) the waterway behind Mr. Zeraschi's property is not a manmade canal and (2) Mr. Zeraschi's property contains riverfront area associated with that waterway. With these two modifications, I make Mr. Zeraschi's superseding determination of applicability final.

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1. Under certain circumstances not relevant here, the boundary of a riverfront area may be less than two hundred feet from a river's mean annual high-water line. See 310 CMR 10.58(2)(a)(3).
2. The Wetlands Regulations define the term "river" to include perennial streams. See 310 CMR 10.58(2)(a)(1). Thus, unless an exemption applies, every perennial stream has a riverfront area.
3. See footnote 2.
4. The conference originally was scheduled for January 3, 2007, but the DEP asked to re-schedule it.
5. Citations to the record are as follows. The witnesses' pre-filed direct testimony and pre-filed rebuttal testimony are cited as "Dir." and "Reb.", respectively. An exhibit submitted with a witness's pre-filed testimony is referred to by the witness's last name, followed by "Exh. \_\_\_." Testimony given during the hearing is cited by the name of the witness, followed by "Test." Finally, an exhibit that was admitted into evidence during the hearing is cited as "Hearing Exh. \_\_\_."
6. Some documents refer to the streams by other names. Unless otherwise noted, I use these names in this decision. In addition, street names have changed over time. For consistency, all street names are taken from Finocchio Exhibit 8, while distances were measured by cross-referencing that exhibit with Fink Exhibit 3.
7. The Saugus River begins at the outlet of Lake Quannapowitt.
8. Before the Main Channel was built, Ash Street Brook originated in a swamp well to the north of Cross Street; it flowed southeast and then forked approximately halfway between Cross Street and Brook Street. After the fork, the main branch originally flowed east into Lake Quannapowitt. The second branch, which the Main Channel followed, originally flowed northeast for roughly three thousand feet, ending shortly before John Street. See Finocchio Exh. 8.
9. In certain areas, concrete and/or a clay-gravel borrow may have been used instead of timber. See Fink Exh. 21.
10. The Conservation Commission and DEP's closing briefs are near mirror images of one another, with the same arguments presented nearly word-for-word. I therefore address their arguments together.
11. The DEP and Conservation Commission's argument is flawed for a number of other reasons as well. For example, the agencies have not explained why a canal's original purpose should be used as the defining feature that determines whether a canal falls within the manmade canal exemption or not.

Moreover, the DEP does not adhere to its own proposed definition. For instance, the DEP ruled that one waterway was a manmade canal because it is not fed by a network of tributaries; another is considered to be a manmade canal even though it is used for water supply, rather than for navigation or as a diversion canal. See Davis Dir. at ¶ 4 and Davis Test. (testifying about why two waterways—a narrow channel in Natick and the Salem-Beverly water supply canal—were manmade canals under 310 CMR 10.58(2)(a)(1)(g)). See, e.g., *Morin v. Comm'r. of Public Welfare*, 16 Mass. App. Ct. 20, 24-25, 448 N.E.2d 1287, 1290-91 (1983) (where agency does not consistently interpret or apply its own regulations, the agency's interpretation of that regulation is entitled to no weight).

12. Ms. Davis explained that a "dendritic network of tributaries" refers to the treelike shape created by a stream and its tributaries, with the main trunk, branches and twigs corresponding to the main stream, tributaries and subtributaries, respectively. I also note that tributaries flow into the Main Channel only because it was built that way.

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## View Decision Archive

**Publication** Massachusetts DEP Reporter (1994-present)

**Name:**

**Decision Name:** ROBERT ZERASCHI

**Case**

17 DEPR 163 (2010)

**Citation:**

**Decision**

**Detail:**

In the Matter of ROBERT ZERASCHI

DEP Docket No. 2006-115

DALA No. DEP-06-939

Determination of Applicability Reading

December 8, 2008

Laurie Burt, Commissioner

### FINAL DECISION

This appeal involves the interpretation of a particular provision of the regulations to implement the Rivers Protection Act amendments to the Wetlands Protection Act. St. 1996, c. 258; MGL c. 131, s. 40. The issue is whether Lots G and H on Torre Road in Reading, owned by Robert Zeraschi, have a riverfront area. The lots abut Walkers Brook, formerly known as the "Reading Drainage Canal." The more specific question is whether this watercourse is a "manmade canal," and therefore does not have a riverfront area under the regulations. 310 CMR 10.58(2)(a)1.g. The parties have marshalled an impressive array of evidence about the history and characteristics of the watercourse. The Administrative Magistrate concluded that the watercourse is a "river," defined as a "natural flowing body of water that empties into any ocean, lake, pond, or other river and which flows throughout the year." MGL c. 131, s. 40, 310 CMR 10.04 River, 310 CMR 10.58(2)(a)1. She also concluded that the Main Channel section of Walkers Brook is a "manmade canal," so that the Applicant's property does not contain riverfront area. I accept these conclusions only for these two lots, not for the entirety of Walkers Brook, or as the analysis might apply to other watercourses constructed for drainage or to other manmade watercourses.

### Discussion

The term "manmade canal" or "canal" appears nowhere in the Rivers Protection Act or the Wetlands Protection Act and is not a defined term in the regulations. The regulations provide:

Manmade canals (e.g., the Cape Cod Canal and canals diverted from rivers in Lowell and Holyoke) and mosquito control ditches associated with coastal rivers do not have riverfront areas.

310 CMR 10.58(2)(a)1.g. The origin of this exemption appears to reside in the statutory definition of "riverfront area." The statute states:

The riverfront area shall not include land now or formerly associated with historic mill complexes including, but not limited to, the mill complexes in the Cities of Holyoke, Taunton, Fitchburg, Haverill, Methuen and Medford in existence prior to nineteen hundred and forty-six and situated landward of the waterside façade of a retaining wall, building, sluiceway, or other structure existing on the effective date of this act. The riverfront area shall not apply to any mosquito control work done under the provisions of [MGL c. 40, s. 5, cl. 36, c. 252, or any special act].

MGL c. 131, s. 40. Thus, the statute provides an exemption from the riverfront area for historic mill complexes and mosquito control, but begs the question of geographic jurisdiction, whether the riverfront area begins at the edge of the river itself or at the edge of any related canals serving the mills or ditches dug to control mosquitoes.



The regulations answer the jurisdictional question by stating more generally that “manmade canals” do not have riverfront areas, including examples, and more specifically that only mosquito control ditches extending from coastal rivers do not have riverfront areas. The examples of “manmade canals”—the Cape Cod Canal and the Lowell and Holyoke canals—appear to have been selected because they would be familiar to persons using the regulations.<sup>1</sup> Since work on historic mill complexes and mosquito control work are exempt from activity jurisdiction, the consequence of the scope of geographic jurisdiction related to canals and mosquito ditches falls on other types of activities.

The grandfather and exemptions provisions in the regulations are faithful to the statute, with nothing to suggest that the Department intended the term “manmade canals” to apply beyond the circumstances of canals associated with mills and of “manmade canals” which are not rivers, such as the Cape Cod Canal. It is consistent with the wetlands regulations to evaluate the status of a watercourse from the perspective of its present condition, whether it functions at the time of filing as a “man-made canal.” The change in status of an artificial channel to a river is an accepted principle of riparian law:

In *Freeman v. Weeks*, 45 Much. 335, Judge Cooley said: “If by common consent the ditch was dug as a neighborhood drain and has remained open as a watercourse for a series of years, it ought to be governed by the same rules that apply to other watercourses.” It has often been decided both in England and America, that watercourses made by the hand of man may have been created under such conditions that, so far as the rules of law and the rights of the public or of individuals are concerned, they are to be treated as if they were of natural origin. Baron Channell said of one of them, in *Nuttall v. Bracewell*, L.R. 2 Ex. 1, “It is a natural stream or flow of water, though flowing in an artificial channel.”

*Stimson v. Inhabitants of Brookline*, 197 Mass. 568 (1908). I note that the definition of “river” in the statute and regulations as a “natural flowing body of water” may also refer to watercourses with a natural flow as opposed to a natural channel. Thus, the Department and the Reading Conservation Commission may be correct that the watercourse at issue here, Walkers Brook (formerly Reading Drainage Canal) is now a river despite its manmade origin as a canal.

Nonetheless, the most relevant definition of “canal” is “an artificial waterway designed for navigation or for draining or irrigating land.” Webster’s Third New International Dictionary, Canal, n. def. 4 (1993). Walker’s Brook fits this definition as to its origin as an artificial drainage channel. Because the term was not defined in the regulations and there are no final decisions from adjudicatory hearings to provide interpretive guidance to the contrary, the Petitioner is entitled to rely on the ordinary meaning of this term. I conclude therefore, that lots G and H on Torre Road in Reading do not have riverfront areas. I make no determination on Walker’s Brook in Reading or in neighboring towns, or on other similar drainage channels. I note that case-by-case determinations on the status of watercourses based on the undefined term, “manmade canal” is likely to yield inconsistent results as various interested persons may reach this question: landowners, conservation commissions of different towns through which a watercourse may pass, and between regional offices of the Department. A similar concern led to mapping of the mouths of coastal rivers to how where the riverfront area ends, as directed by a former Commissioner in a Final Decision. See *Matter of Notarangelo*, Docket No. 2002-021, Final Decision (October 1, 2003). I ask the Wetlands Program to review this question and either by policy or regulation clarify what watercourses, other than the canals and mosquito ditches specified in the statute, if any, should not have riverfront areas.

The parties to this proceeding are notified of their right to file a motion for reconsideration of this Decision, pursuant to 310 CMR 1.01 (14)(d). The motion must be filed with the Docket Clerk and served on all parties within seven business days of the postmark date of this Decision. A person who has the right to seek judicial review may appeal this Decision to the Superior Court pursuant to MGL c. 30A, §14(1). The complaint must be filed in the Court within thirty days of receipt of this Decision.

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Representing the Reading Conservation Commission

1. The Cape Cod Canal clearly does not arise from the statutory exemption and its inclusion here may be incidental.

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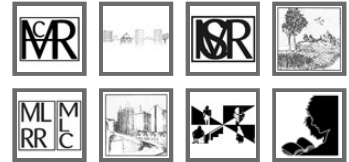
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## View Decision Archive

**Publication** Massachusetts DEP Reporter (1994-present)

**Name:**

**Decision** ROBERT ZERASCHI

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**Case** 17 DEPR 164 (2010)

**Citation:**

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**Detail:**

In the Matter of ROBERT ZERASCHI

DEP Docket No. 2006-115

DALA No. DEP-06-939

Determination of Applicability Reading

April 1, 2009

Laurie Burt, Commissioner

### FINAL DECISION ON RECONSIDERATION

I adopt the Recommended Final Decision on Reconsideration of the Presiding Officer. Any party may appeal this Decision to the Superior Court pursuant to MGL c. 30A, §14(1). The complaint must be filed in the Court within thirty days of receipt of this Decision.

March 20, 2009

Pamela D. Harvey, Presiding Officer

### RECOMMENDED FINAL DECISION ON MOTION FOR RECONSIDERATION

I recommend that the Motion for Reconsideration (the "Motion") of the Reading Conservation Commission be denied because there was no error of fact or law in the Final Decision that the Department's Commissioner issued in this case. See 310 CMR 1.01(14)(d). The Motion requests reconsideration of the Commissioner's decision that the watercourse now known as Walkers Brook, formerly the "Reading Drainage Canal," adjacent to Lots G and H on Torre Road in Reading is a "manmade canal" and thus has no riverfront area. 310 CMR 10.58(2)(a)1.g. The Reading Conservation Commission states that the water course is a river and thus cannot be a canal. The Motion notes that MGL c. 131, § 40 contains no specific exemptions for "canals," but concedes that 310 CMR 10.58(2)(a) 1.g. does provide an exemption for "manmade canals." The Motion states that the Final Decision relies on contradictory factual findings, and that the watercourse at issue is a rerouted river.

The regulatory provision states that "manmade canals do not have riverfront areas;" it is silent on their status as rivers. 310 CMR 10.58(2)(a)1.g. Walkers Brook apparently has characteristics of a "natural flowing body of water that flows throughout the year," the definition of a river, despite its origins as a manmade canal. Final Decision at 3 (citing *Stimson v. Inhabitants of Brookline*, 197 Mass. 568 (1908)); see 310 CMR 10.04 River; MGL c. 131, § 40. However, the watercourse was constructed pursuant to legislation and an eminent domain taking as a manmade canal to enhance drainage. See Mass. Acts of 1939, Ch. 458 (legislation establishing the "system of drainage"). Accordingly, 310 CMR 10.58(2)(a) 1.g., by its plain meaning and absent interpretive guidance, would place Walkers Brook within the ambit of the term "manmade canal" along Lots G and H.<sup>1</sup>

While the Reading Conservation Commission finds support in elements of the Final Decision for its position, *Stimson* leaves considerable ambiguity about the resolution of this case.<sup>2</sup> *Stimson v. Inhabitants of Brookline*, 197 Mass. 568 (1908). *Stimson*, a case involving the Charles River, articulated the proposition that an artificially constructed channel could acquire the status of a river over time. *Id.* The channel in *Stimson*, however, was dug in the 1650s and characterized by the court as "ancient" in 1908, a time span of 250 years as opposed to the 70 years between the 1939 legislation and the appeal at issue here. See *Stimson* at 569. In addition, there is language in *Stimson*

suggesting that legislation could create a ditch for drainage that would remain a ditch rather than a watercourse of any kind. Stimson at 572. The legislation affecting Mr. Zeraschi's lots apparently placed responsibility on the Town of Reading to "maintain and operate" the drainage works as a drainage system for Lake Quannapowitt. See Mass. Acts of 1939, Ch. 458, § 2 and 6. There is evidence in the record that the channel was re-routed twice, to accommodate the expansion of Reading's former landfill and the construction of Route 128, although it is unclear whether the 1939 legislation has any continuing effect. Thus, the history of Walkers Brook clearly indicates manmade origins but the record is less clear on its current status.

While the ambiguities properly were resolved in favor of Mr. Zeraschi, it was not the intent of the Final Decision to suggest that the Department would be precluded from an interpretation that would allow other portions of Walkers Brook to be considered as a river with a riverfront area. Indeed, the Commissioner asked the Wetlands Program to review this question and clarify, either by policy or regulation, the circumstances, if any, under which perennial watercourses of artificial origin should not have riverfront areas. Such a clarification would inform the regulated community of jurisdiction and promote consistent application by Conservation Commissions and the Department's regional offices. In the absence of such clarification, I recommend an interpretation of the term "manmade canal" to describe a watercourse that is artificially created rather than natural in origin and that continues to be operated, maintained, used, or preserved with respect to its original purpose.<sup>3</sup>

#### NOTICE-RECOMMENDED FINAL DECISION ON RECONSIDERATION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to MGL c. 30A. The Commissioner's Final Decision is subject to court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

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Representing the Reading Conservation Commission

1. Note that the term "manmade canal" intrinsically invokes the circumstances under which the canal was constructed.
2. Stimson was cited in the Final Decision.
3. This interpretation would apply to the examples in the regulations; the Cape Cod Canal is in active use for navigational purposes and the Holyoke and Lowell canals are preserved as canals. It is the presence of the 1939 legislation that most clouds the categorization of Walkers Brook, an issue that resides in part with the Town of Reading. The Department could provide alternative guidance or amend its regulations to define the term manmade canal, or even eliminate it, leaving the statutory exemptions for mosquito control work and historic mill complexes, and the definition of "river," for determining jurisdiction.

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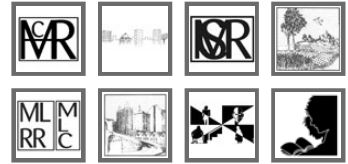
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**Publication** Massachusetts DEP Reporter (1994-present)

**Name:**

**Decision** JOHN SOURSOURIAN

**Name:**

**Case** 21 DEPR 63 (2014)

**Citation:**

**Decision**

**Detail:**

### THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

In the Matter of JOHN SOURSOURIAN

Docket No. WET-2013-028

File No. SORAD

Manchester by the Sea

June 19, 2014

David W. Cash, Commissioner

#### **FINAL DECISION**

I adopt the Recommended Final Decision of the Presiding Officer. The parties to this proceeding are notified of their right to file a motion for reconsideration of this decision, pursuant to 310 CMR 1.01(14)(d). The motion must be filed with the Case Administrator and served on all parties within seven business days of the postmark date of this decision. A person who has the right to seek judicial review may appeal this decision to the Superior Court pursuant to M.G.L. c. 30A, §14(1). The complaint must be filed in the Court within thirty days of receipt of this decision.

June 13, 2014

Timothy M. Jones, Presiding Officer

#### **RECOMMENDED FINAL DECISION**

##### **INTRODUCTION**

John Soursourian ("Petitioner") filed this appeal concerning Lot 1D of the real property he owns at Pole Swamp Lane, Manchester, Massachusetts ("the Property"). The appeal arises out of a Superseding Order of Resource Area Delineation ("SORAD") that Soursourian received from the Northeast Regional Office of the Massachusetts Department of Environmental Protection ("MassDEP"). See 310 CMR 10.02(2) (wetland resource boundaries may be defined through an Order of Resource Area Delineation); 310 CMR 10.05(6); 310 CMR 10.05(7). The SORAD was issued pursuant to the Wetlands Protection Act, G.L. c. 131 § 40, and the Wetlands Regulations, 310 CMR 10.00, specifically 310 CMR 10.02 and 10.05(7)(g).

Soursourian had requested the SORAD, seeking a designation under 310 CMR 10.58 that the watercourse on the Property is an intermittent stream or exempt from the Riverfront Area regulations as a "manmade canal." MassDEP denied Soursourian's request, finding the watercourse was a perennial stream and not an exempt manmade canal. See 310 CMR 10.58, 310 CMR 10.58(2)(a)1.g.. Generally speaking, a perennial stream flows throughout the year, in contrast to an intermittent stream, which does not. 310 CMR 10.58

Before me is Soursourian's *de novo* appeal from the SORAD, in which he generally asserts that the watercourse on his Property is intermittent, and not perennial. Alternatively, he claims that it is exempt from the Riverfront Area regulations as a "manmade canal." 310 CMR (2)(a)1.g. The outcome is important for several reasons, but primarily because a perennial stream is a river with a Riverfront Area. A Riverfront Area is defined as the area of land that extends outward for 200 feet from and parallel to the mean annual high water line for the stream. 310 CMR 10.58(2)

(a). The Act and the Regulations provide certain development restrictions for the Riverfront Area, which generally do not apply to intermittent streams. See 310 CMR 10.54 and 10.58.

I conducted an adjudicatory hearing, during which all parties were represented by counsel. After considering all of the evidence and the applicable law, I recommend that the Commissioner issue a Final Decision affirming the SORAD. A preponderance of the evidence demonstrates that the watercourse is a perennial stream. Soursourian failed to present a preponderance of the evidence that the stream was intermittent by showing that it was dry or not flowing for four days in a consecutive twelve month period, pursuant to 310 CMR 10.58(2)(a)1.d. Soursourian also failed to present a preponderance of the evidence showing that the stream was exempt as a "manmade canal" and had been maintained as such, pursuant to 310 CMR 10.58(2)(a)1.g.

### **BACKGROUND**

The Property is located at the municipal boundary of Beverly and Manchester. The portion of the Property at issue is limited to the area of Lot 1D lying entirely within Manchester. See Wallis Rebuttal PFT(1), Exs. A and C. Within that portion is the watercourse, which is identified on Soursourian's plans as "Existing Ditch," travelling from within Beverly towards the north through the Property in Manchester for the entire length of the Property--about 400 feet. It is approximately 5 to 10 feet wide. Id. Where it leaves the Property at its northern boundary it travels under intersecting roads identified as Preston Place and "Dirt Road." Id. The direction of flow in the watercourse is north, from a pond in Beverly and then through the Property located in Manchester to another pond located north of the Property boundary. White PFT, p. 5.

The matter originated when Soursourian filed an Abbreviated Notice of Resource Area Delineation ("ANRAD") under 310 CMR 10.05(3) with the Manchester Conservation Commission.(2) Ogren PFT, p. 4. An ANRAD is generally filed to delineate the extent of the wetland Buffer Zones and Resource Areas prior to filing a Notice of Intent for proposed work. Soursourian desires to build a single family residence on Lot 1D. Soursourian PFT, p. 2.

Soursourian filed the ANRAD to obtain a determination that the watercourse on the Property in Manchester was exempt from the Riverfront Area regulations in 310 CMR 10.58. If a watercourse is determined to be perennial it is a river with an associated Riverfront Area. A river is any natural flowing body of water that empties to any ocean, lake, pond, or other river and which flows throughout the year. Rivers include streams that are perennial because surface water flows within them throughout the year. See 310 CMR 10.58(2); 310 CMR 10.04 (definition of stream). Intermittent streams are not rivers because surface water does not flow within them throughout the year. Id.

The Riverfront Regulations (310 CMR 10.58) contain exemptions for certain watercourses. Soursourian's ANRAD sought to qualify the watercourse as an exempt manmade canal under 310 CMR 10.58(2), which provides: "Manmade canals (*e.g.*, the Cape Cod Canal and canals diverted from rivers in Lowell and Holyoke) and mosquito ditches associated with coastal rivers do not have riverfront areas." 310 CMR (2)(a)1.g. The Manchester Conservation Commission denied Soursourian's exemption request, issuing an Order of Resource Area Delineation ("ORAD") finding the watercourse is perennial and not a manmade canal.(3)

Similarly, the Beverly Conservation Commission issued an Order of Conditions to Soursourian in 2008 for a reach of the same watercourse in Beverly. That Order designated the reach in Beverly as perennial. Wallis Rebuttal PFT, pp. 1-2. That reach is just upstream of, and flows into, the reach at issue here on the Property in Manchester. Soursourian Rebuttal PFT, p. 3. Soursourian did not assert the Beverly based watercourse was intermittent when he applied for the Beverly Order of Conditions; consequently, the Beverly Order of Conditions designated the watercourse as a perennial stream with a Riverfront Area. Wallis Rebuttal PFT, p. 3. Soursourian did not challenge its perennial designation because he was in the process of determining the status of the stream and wanted to move promptly forward with the project in Beverly. Wallis Rebuttal PFT, p. 3. The merits of the Beverly Order of Conditions are not at issue in this appeal.

Returning to the Manchester Property, Soursourian disagreed with the Manchester Conservation Commission ORAD, and he appealed to MassDEP, requesting that it issue a SORAD finding the watercourse on the Property is intermittent or, alternatively, a canal that is exempt from the Riverfront Area requirements. MassDEP denied that request; first, it found that the stream was perennial under 310 CMR 10.58(2)(a)1.a, which provides: "A river or stream shown as perennial on the current United States Geological Survey (USGS) or more recent map provided by the Department is perennial." It was undisputed that the most recent USGS map designated the watercourse as perennial.

Soursourian attempted to disprove that perennial finding by making "a documented field observation that the stream is not flowing" and is thus intermittent pursuant to 310 CMR 10.58(2)(a)1.d. Soursourian relied on observations made by the Manchester Conservation Administrator, Mary Reilly. Soursourian Rebuttal PFT, pp. 2-3; Wallis Rebuttal PFT, Ex. G.

MassDEP found that Soursourian failed to make a proper showing of intermittency. MassDEP discussed Reilly's observations of some isolated locations in the stream, where it appeared there may have been little or no flow.<sup>(4)</sup> MassDEP specifically found that there was "an active beaver dam restricting flow to the downstream portions of the stream and causing these areas to be deprived of flow."<sup>(5)</sup> It concluded the dam was ephemeral and not reflective of the watercourse's natural undisturbed state, and thus the USGS designation of perennality had not been disproven. Id. Last, MassDEP determined that the watercourse was not exempt as a manmade canal, both because there was no showing it was manmade nor that it had been maintained as such.

Soursourian then initiated this action, filing the appeal with OADR under 310 CMR 1.01 and 310 CMR 10.05(7)(j). Those regulations contain detailed procedural provisions for petitioners who file a wetlands appeal. Shortly after the appeal was filed, I held a Pre-Screening/Pre-Hearing Conference with the parties pursuant to 310 CMR 1.01. I explained in detail the process by which the appeal would be resolved under 310 CMR 1.01 and 310 CMR 10.05(7)(j). I emphasized the importance of making a full and complete administrative record before me by submitting timely and complete pre-filed written testimony, in accordance with 310 CMR 1.01 and 310 CMR 10.05(7)(j). The adjudicatory proceeding rules at 310 CMR 1.01 contain detailed regulations governing adjudicatory proceedings, including the submission and presentation of evidence. I explained that making a full and complete administrative record in this appeal was important because, generally speaking, any further appeals under G.L. c. 30A would be limited to the administrative record that was established in this appeal. See Pre-Screening/Pre-Hearing Conference Report and Order (January 29, 2014). I explained that the adjudicatory hearing would be limited to the cross examination of witnesses who timely submitted pre-filed written direct and rebuttal testimony before the hearing, pursuant to the schedule I established. Id.; 310 CMR 1.01.

The parties agreed to the following designation of issues to be adjudicated in this appeal:

1. Whether the subject watercourse is an intermittent stream, and not perennial, under 310 CMR 10.58(2).
2. Whether the subject watercourse is a manmade canal under 310 CMR 10.58(2).

See Pre-Screening/Pre-Hearing Conference Report and Order (January 29, 2014).

The parties submitted written pre-filed testimony according to the schedule I established, and their witnesses appeared at the adjudicatory hearing for cross examination. The following witnesses testified on behalf of Soursourian:

1. Peter J. Ogren. Ogren is a Registered Professional Engineer, Registered Land Surveyor, and President of Hayes Engineering, an engineering and surveying firm employing approximately 25 people. He has significant experience working on wetlands permitting matters, including issues concerning Riverfront Areas. He holds BS and MS degrees in civil engineering.
2. Elizabeth C. Wallis. Wallis has been employed as a wetland scientist at Hayes Engineering, Inc. since 1991. She has significant experience with wetlands delineation. She is certified as a Professional Wetlands Scientist. She holds a BS degree in botany.
3. John Soursourian. Soursourian has significant experience with construction and property development. He holds a BS degree in civil engineering and an MBA degree in real estate finance.

The following witness testified for MassDEP:

1. Nancy White. White is employed with MassDEP as an Environmental Analyst III with the Wetlands and Waterways Program. She began her employment with MassDEP in 1997. She has significant experience with wetlands permitting and enforcement matters. She holds a BA degree in environmental science, and has acquired other formal education in wetlands science.

### **THE BURDEN OF PROOF**

As the appealing party, Soursourian had the burden of going forward by producing credible evidence from a competent source in support of his position. 310 CMR 10.03(2); 310 CMR 10.05(7)(j)3.; see Matter of Town of Freetown, Docket No. 91-103, Recommended Final Decision (February 14, 2001), adopted by Final Decision (February 26, 2001) ("the Department has consistently placed the burden of going forward in permit appeals on the parties opposing the Department's position."). Specifically, Soursourian was required in his direct case to establish the legal and factual bases of his claims for the issues identified by me in the Pre-Screening/Pre-Hearing Conference Report and Order. 310 CMR 10.05(7)(j)3.c. Failure to do that "result[s] in waiver of Petitioner's Direct Case for that issue." Id. The direct case must at a minimum include "credible evidence from a competent source in support of each claim of factual error, including any relevant expert report(s), plan(s), or photograph(s)." 310 CMR 10.05(7)(j)3.c. So long as



the initial burden of production or going forward is met, the ultimate resolution of factual disputes depends on where the preponderance of the evidence lies. Matter of Town of Hamilton, DEP Docket Nos. 2003-065 and 068, Recommended Final Decision (January 19, 2006), adopted by Final Decision (March 27, 2006).

"A party in a civil case having the burden of proving a particular fact [by a preponderance of the evidence] does not have to establish the existence of that fact as an absolute certainty. . . . [I]t is sufficient if the party having the burden of proving a particular fact establishes the existence of that fact as the greater likelihood, the greater probability." Massachusetts Jury Instructions, Civil, 1.14(d).

The relevancy, admissibility, and weight of evidence that the parties sought to introduce in the Hearing were governed by G.L. c. 30A, § 11(2) and 310 CMR 1.01(13)(h)(1). Under G.L. c. 30A, § 11(2):

[u]nless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.

Under 310 CMR 1.01(13)(h), "[t]he weight to be attached to any evidence in the record will rest within the sound discretion of the Presiding Officer. . . ."

## **DISCUSSION**

### **I. A Preponderance Of The Evidence Shows The Watercourse Is A Perennial Stream**

The central issue is whether the watercourse is a perennial or intermittent stream. Soursourian contends it is intermittent, MassDEP disagrees.

Under the Act and the Regulations, a river is defined as a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year. G.L. c. 131 § 40. 310 CMR 10.58(2)(a)1. Rivers include perennial streams because surface water flows within them throughout the year. Id.; 310 CMR 10.04 (definition of stream).(6)

All perennial streams, or rivers, have a regulated Riverfront Area, which the Act defines as: "that area of land situated between a river's mean annual high-water line and a parallel line located two hundred feet away, measured outward horizontally from the river's mean annual high-water line." G.L. c. 131 § 40. Riverfront Areas generally receive special protection under the Act and the Regulations because of the environmental benefits they provide, including: protection of the water supply (including groundwater), flood control, storm damage prevention, protection of wildlife habitat (including fisheries and habitat within the Riverfront Area), and maintenance of water temperatures. They are critical to preventing water pollution by filtering contaminants before they reach the River and groundwater. See generally 310 CMR 10.58(1) (discussing in detail environmental benefits of the Riverfront Area).

The Regulations provide that a "river or stream shown as perennial on the current United States Geological Survey (USGS) or more recent map provided by the Department is perennial." 310 CMR 10.58(2)(a)1.a. Here, it is undisputed that the current USGS map shows the watercourse as perennial, and thus it is perennial under the Regulations. White PFT, p. 4.

The question for adjudication is whether Soursourian has disproven the USGS designation with a preponderance of the evidence showing the watercourse is intermittent under 310 CMR 10.58(2)(a)1.d. That provision specifies that a perennial stream may be shown to be intermittent "based upon a documented field observation that the stream is not flowing." A "documented field observation" must be made by:

a competent source and shall be based upon an observation made at least once per day, over four days in any consecutive 12 month period, during a non-drought period on a stream not significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other man-made flow reductions or diversions. Field observations made after December 20, 2002 shall be documented by field notes and by dated photographs or video. . . . All field observations shall be submitted to the issuing authority with a statement signed under the penalties of perjury attesting to the authenticity and veracity of the field notes, photographs or video and other credible evidence. Department staff, conservation commissioners, and conservation commission staff are competent sources; issuing authorities may consider evidence from other sources that are determined to be competent. (emphasis added)

In sum, this regulation requires: (1) a competent source to make four days of field observations in a consecutive 12 month period showing no flow for the reach believed to be intermittent, (2) corroboration of the observations with

field notes and dated photographs or video, and (3) authentication and attestation of the observations, notes, photographs, and video under the penalties of perjury. In addition, in an adjudicatory proceeding, the procedural and evidentiary rules in 310 CMR 1.01 are applicable. Soursourian's evidence of intermittency fell quite short of these requirements.

To show intermittency, Soursourian and his expert witnesses Ogren and Wallis relied on and cited the observations purportedly made in August 2013 by Mary Reilly, the Manchester Conservation Commission's Administrator. Ogren PFT, pp. 4-6; Soursourian PFT, p. 2; Wallis Rebuttal PFT, p. 6. Reilly made the observations at the request of Soursourian, and she allegedly recorded her observations in a written log. Soursourian Rebuttal PFT; Wallis Rebuttal PFT, p. 6. Based solely upon that purported log, Wallis testified that: "the stream was observed to have no flow on 7/23/13, to be dry with isolated pools on 8/22/13, to be dry with small pooling on 8/28/13, and to be dry with small pooling on 8/29/13." She concluded that "[t]hese observations are substantiated by photographs in the file, and confirmed by the November 19, 2013 SORAD in this matter, which recites that 'the stream was observed dry to damp on five documented days.'" Wallis Rebuttal PFT, p. 6.

Soursourian did not designate Reilly to testify as a witness.<sup>(7)</sup> He did file documents and photographs purportedly generated by Reilly when she made her observations in August 2013. Those documents were obtained as part of a public records request to MassDEP from Wallis in January 2014, requesting the entire MassDEP file for the matter. Wallis Rebuttal PFT, p. 6; Wallis Rebuttal PFT, Ex. G. Part of that file is a three page table, or log, attached to Wallis' testimony, titled "Pole Swamp Lane Stream Log; Last edit 8/29/13." That Stream Log is the log relied upon by Wallis and Soursourian for the assertion that they have shown the stream is intermittent. But there are many problems with their reliance on that log that, in the end, leads me to attach no weight to it.

First, the Stream Log itself and the photographs purportedly associated with it are classic, multi-layered hearsay. Although I may rely upon hearsay evidence under certain circumstances, Soursourian has not pointed to any indicia of reliability for the Stream Log and the photographs, rendering the hearsay unreliable and of little evidentiary weight, for this reason alone. See generally Matter of Franklin Office Park Realty Corp., Docket No. 2010-016, Recommended Final Decision (February 24, 2011), adopted by Final Decision (March 9, 2011) (discussing hearsay standard). Also problematic for evidentiary purposes is that the Stream Log was not even obtained from the alleged declarant (Reilly, who works for Manchester); it was obtained from MassDEP, which supposedly produced its entire file in this matter.

Second, the substance of the documents themselves is *very* ambiguous, making it quite difficult to discern precisely what evidentiary value they add, even if they did not have the hearsay problem. I elaborate upon this ambiguity below:

The Stream Log is a three page table with separate columns for "date/time," "weather," "stream observations," and "other notes." The "date/time" column identifies the dates Reilly purportedly made observations. In the observations column are very obscure references to what was apparently observed on each date. In the "other notes" column are ambiguous notes and references to vaguely identified photographs. Behind the log, are photocopies of 65 color photographs. Generally, no information is provided to identify what each photograph purports to depict, where it was taken, and who took it. A large majority of the photographs are of water in a river channel. More specifically, for the dates referenced above by Wallis as showing dry or no-flow conditions it is not clear what, if any, photographic support exists, which is in noncompliance with the regulatory requirement that the observations be documented by properly authenticated photographs or video. 310 CMR 10.58(2)(a)1.d. To be certain, although the Stream Log generally alludes to photographs, it is unclear: (1) what specific photographs are being referenced and for what purpose, (2) what the photographs purport to depict, (3) where the photographs were taken, and (4) who took the photographs. Many of the photographs appear to depict water confined in a reach of a stream channel, presumably the stream channel on the Property, but that was never properly authenticated. Just as important, it is not clear where along the watercourse each of the photographs was taken.

Soursourian and Wallis assert, based upon Reilly's log and the attached photographs, that in some locations where there is water in the stream the water is not flowing, primarily, perhaps, as a result of beaver dams. There is, however, no reliable photographic or video evidence showing that the water in the channel is not flowing. While the water surface may appear in the photographs to be still, it is quite possible that the underlying water column could be flowing downstream through the beaver dam.<sup>(8)</sup> In fact, Soursourian expert Ogren testified that he believes beaver dams do not entirely withhold or retain water, and instead continue to allow some downstream discharge. Ogren Rebuttal PFT, p. 3. In addition, absent evidence that the water in the stream channel originated from groundwater, the only other possible source would be the *flow* from upstream points. In fact, White testified that the source of the water observed in the stream was the upstream pond, not the groundwater. Hearing Testimony 1, 1:36:00.<sup>(9)</sup> This further undermines the photographs purporting to show no-flow in water above and below beaver dams. The Regulations also support this interpretation, providing: "When surface water is not flowing within an intermittent

stream, it may remain in isolated pools or it may be absent. When surface water is present in contiguous and connected pool/riffle systems, it shall be determined to be flowing. Rivers begin at the point an intermittent stream becomes perennial or at the point a perennial stream flows from a spring, pond, or lake. Downstream of the first point of perennial flow, a stream normally remains a river except where interrupted by a lake or pond. Upstream of the first point of perennial flow, a stream is normally intermittent." 310 CMR 10.58(2)(a)1 (emphasis added).

Some photographs appear to show a small location in a watercourse in which there is no water in the channel. Assuming they depict the watercourse at issue, there is no reliable information showing where precisely on the watercourse the photographs were taken or when they were taken. Further, even assuming, for purposes of argument, that these photographs depicted dry conditions at the particular location for four days in a twelve month period, they provide little evidentiary value; this is because it is possible that the remaining upstream or downstream portions of the watercourse could be flowing. In fact, it is quite possible that while there may be no flow in this isolated location, rendering it intermittent under the Regulations, the remainder of the stream on the Property may be perennial. See Matter of Martha Jean Eakin, Docket No. 2002-013, Recommended Final Decision (April 12, 2005), adopted by Final Decision (June 8, 2005) (a stream can vary from being perennial to intermittent and vice versa); Matter of Robert Winter, Docket No. 2002-010, Recommended Final Decision, (May 15, 2003), adopted by Final Decision (August 11, 2003); see also 310 CMR 10.58(2)(c) ("The boundary of the Riverfront Area is a line parallel to the mean annual high water line, located at the outside edge of the riverfront area. At the point where a stream becomes perennial, the riverfront area begins at a line drawn as a semicircle with a 200 foot (25 foot in densely developed areas; 100 foot for new agriculture) radius around the point and connects to the parallel line perpendicular to the mean annual high water line which forms the outer boundary.").

Injecting additional ambiguity into the administrative record are the Stream Log entries themselves. The locations referenced in the Stream Log *appear* to be relatively small isolated locations at points along the reach of the stream on the Property. For the July 23, 2013, reference, the observations were limited to "the small stretch at the end of Preston Place." Preston Place is a roadway that travels parallel and north of the northern boundary of the Property. The northern boundary is the farthest downstream point on the Property. Wallis Rebuttal PFT, Ex. A. Given this and the limitation to this "small," isolated location with no information concerning the remainder of the stream, it is possible that the remaining upstream portion of the stream on the Property could be flowing. See Eakin, supra.; Winter, supra. 310 CMR 10.58(2)(c).

Further, for the same referenced day (July 23, 2013), the Stream Log also states: "Need to investigate whether or not there are obstructions upstream that may be preventing flow." This is noteworthy, because if manmade obstructions are found to be significantly affecting the stream flow, the alleged no-flow conditions may not be considered as evidence the stream was intermittent. See 310 CMR 10.58(2)(a)1.d. ("Rivers and streams that are perennial under natural conditions but are significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other man-made flow reductions or diversions shall be considered perennial."). And, as discussed below, a subsequent Stream Log reference discusses possible manmade obstructions.

The next date relied upon by Wallis is August 22, 2013. The Stream Log entry for that date states that the stream was observed dry at an isolated location identified only as: "Foot crossing." Here again, the log does not specify the location of the observation point--the "foot crossing." White testified that she believed the "foot crossing" was located at the most downstream point on the Property, at Preston Place (approximately at wetland flags C-1 and C-2). Hearing Testimony 1, 1:30:00. For the same date, the Stream Log identifies three other unspecified locations. For those, the log states generally that water is pooling and there is a little flow, with no precise location and no statement that there is no-flow or dry conditions. Perhaps more problematic is the note at the end of the entry for that date, which indicates the impoundment or "blockage" may be manmade. It states: "We also examined the blockage and noted there were boards and sticks and that it most likely wasn't created by beavers." An August 26, 2013, email from Reilly to White states that the "impoundment near wetland flag C15 was probably caused by someone putting boards there (maybe for a crossing) and then other branches getting caught up at that point." Wallis PFT, Ex. G. Again, if this is a manmade obstruction that is significantly impacting the flow, then the no-flow or dry conditions caused by it could not be considered as showing intermittency. Last, it is not clear what photographs are associated with this date and these observation points.

For the August 28, 2013 date relied upon by Wallis, the Stream Log entry is limited to one test area, of unknown location. There is no discussion of the remainder of the stream. Although it states that there is "no flow and only small pooling" it appears to attribute that to "blockage" of unspecified origins, perhaps manmade.

Indeed, the next entry, August 29, 2013, discusses the same location--Test Loc #3--but fails to specify the cause of the blockage, stating only that it "could be beavers but . . . they have most likely abandoned it." The entry then states: "Photographed Test Loc #1 and #2" but it is not clear what photographs are associated with that entry. The

entry then states: "conditions the same as on 8/28 (see above)." But the entry for that date focused only on Test Loc #3, not the referenced Test Locations #1 and #2.

In sum, the stream log entries themselves are so ambiguous and conflicting that I attach no evidentiary weight to them, even assuming they were not hearsay.

In addition to relying upon Wallis, Soursourian stated in a general, conclusory manner that he personally observed that the stream did not contain flowing water and he contacted Reilly to document his observations. He testified that he made the same observations that Reilly made in her written log. Soursourian Rebuttal PFT, pp. 2-3. He failed to provide other necessary details and information, such as the required corroborating photographs or video and the specific locations where he made these observations. 310 CMR 10.58(2)(a)1.d. Moreover, he failed to provide sufficient information to determine whether he was competent to assess whether the stream is perennial. Although, he has a BS degree in civil engineering, he provided no detailed information concerning his knowledge and experience relative to the Act and the Regulations, wetlands in general, or river evaluation and hydrogeology, more specifically. Soursourian admitted in the hearing that he is not sufficiently qualified to testify as competent source under the Regulations. Hearing Testimony 1, 00:17:00. For the above reasons, I attach no weight to Soursourian's testimony to disprove the USGS perennial designation.

MassDEP presented evidence that further undermines Soursourian's attempt to disprove the perennial designation. White testified that the methodology employed by Reilly was ambiguous and lacking sufficient precision and clarity. It was difficult to conclude what areas were being tested and whether those same areas were being consistently tested for the required four days. White Rebuttal PFT, p. 13; Hearing Testimony 1, 1:30:00. It was unclear to her what the photographs depicted. *Id.* She also testified that when she visited the Property on August 13, 2013, she observed water within the streambed, flowing from the pond located near the southern Property boundary to the northerly boundary. White PFT, p. 4. She tested whether the stream was flowing by placing a leaf into the water column. Hearing Testimony 1, 1:08:00. Although Wallis did not rely upon August 13, 2013, as one of the four dates to show intermittency, White's observations from that date and its proximity to the dates she relied upon further undermine the attempt to disprove the perennial designation. White also cast more doubt on Reilly's observations, testifying that Reilly did not document the stream bed to be dry between the pond and Test Location #3.(10)

Soursourian responded to MassDEP's case by focusing on MassDEP's SORAD letter. That letter summarizes in very general terms Reilly's ambiguous statements in the Stream Log regarding no-flow or dry conditions. It discusses how stream obstructions are impacting flow. It then summarizes MassDEP's position as: "It is MassDEP's opinion that the evidence presented on your behalf has not overcome the perennial designation of the un-named stream on the current USGS map, specifically because there is an active beaver dam restricting flow to the downstream portions of the stream and cause these areas to be deprived of flow." White PFT, Ex. 2, pp. 2-3. White PFT, p. 6. MassDEP explained that a beaver dam is an ephemeral impoundment that may deteriorate in the future, allowing the stream to return to its more natural state of flow, where more water would flow with greater velocity and consistency through the stream. White PFT, Ex. 2, p. 3; White PFT, p. 6.

When MassDEP presented its direct case in this appeal, it chose to abandon the legal position that the beaver dams essentially precluded a showing of intermittency.(11) MassDEP abandoned that argument because the Regulations arguably appear limited to "manmade flow reductions or diversions" that impact stream flow, not reductions or diversions created by other means, namely beavers.(12) See 310 CMR 10.58(2)(a)1.d. ("Rivers and streams that are perennial under natural conditions but are significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other man-made flow reductions or diversions shall be considered perennial.").

Soursourian takes issue with MassDEP's abandonment of its reliance on the beaver dams as an impoundment that precludes him from showing intermittency. He incorrectly asserts that this appeal must be focused solely on reviewing the SORAD rationale relied upon by MassDEP, which he argues is limited to whether a beaver dam may be considered a flow reduction or diversion under 310 CMR 10.58(2)(a)1.d. Soursourian suggests that MassDEP is bound by that rationale and precluded from changing its position or relying upon another rationale for its decision.

Soursourian's argument is without merit for a number of reasons. First, long standing precedent has rejected the argument that MassDEP is precluded from changing its position in the course of an appeal. As previously held in a number of decisions, that argument ignores the *de novo* function of this appeal. It is well settled that allowing the Department to reconsider its position in the course of an adjudicatory proceeding is in the interest of reaching an agency Final Decision that is consistent with the law and facts. Matter of Hopkinton, Docket No. 2007-165, Recommended Final Decision (August 5, 2011), adopted by Final Decision (September 2, 2011); Matter of Churchill, Docket No. 2005-194, Ruling and Order Allowing Partial Summary Decision (March 29, 2006); Matter of Philip Capolupo, Docket No. 2000-097, Ruling on Motion for Partial Summary Decision (March 15, 2001); see e.g., Matter of

Michael Gaspard, Docket No. 2006-155, Final Decision on Reconsideration (March 15, 2001); Matter of Luongo, Docket No. 91-001, Final Decision (February 7, 1996); Matter of Holbrook, Docket No. 97-045, Ruling and Order on Issues to be Adjudicated (February 19, 1998). At this stage of administrative review where no Final Decision has issued, MassDEP is not restricted to supporting its prior orders. Instead, the reality is that legal interpretations may change, new evidence may be discovered, MassDEP may realize that it made a mistake in its prior order, etc. Thus, "review at this stage is [for the Presiding Officer] . . . to determine whether the Department's decision to issue a superseding order conforms to the standards set forth in the Wetlands Protection Regulations. The Department is a party to the proceeding, and its obligation is to defend the interests of the Wetlands Protection Act, not as it saw them at the time it issued the superseding order, but as it currently sees the situation. If it becomes convinced that the interests of the Act require it to take a different position from one that it had adopted previously, it should be allowed to do so." Matter of Capolupo, *supra*. The Presiding Officer is not bound by MassDEP's prior orders or statements, and instead is responsible in wetland appeals for independently adjudicating appeals and making a recommendation to MassDEP's Commissioner that is consistent with and in the best interest of the Act, Regulations, and MassDEP's policies and practices.(13)

To be clear, although the SORAD ultimately relied on the impact of the alleged beaver dams, the remainder of the decision leaves many unanswered questions and does not unequivocally confirm that the *entire* length of the watercourse on the Property is either not flowing or dry. In fact, the SORAD suffers from many of the same ambiguities discussed above, the first and foremost being that it relied almost entirely upon the ambiguous hearsay from Reilly. Indeed, the SORAD raises the same questions identified above, including: (1) Where specifically are the test locations? (2) What is the precise segment(s) of the watercourse that is allegedly not flowing or dry? (3) Are the reported areas of no-flow indeed not flowing, or does the placid surface simply lead one with that impression, while the underlying water column continues to flow? (4) Why weren't other more reliable methods used to gauge flow of the entire watercourse column? (5) What specific photographic evidence supports no-flow or dry observations? (6) What photographs are being referenced and for what purpose? (7) What photographs purport to depict the no-flow or dry observations? (8) Where were the photographs taken? and (9) Who took the photographs?

Soursourian is not in any way unfairly prejudiced by MassDEP's change in its position. A long line of decisions confirm that this is MassDEP's prerogative. At the Pre-Screening/Pre-Hearing Conference, MassDEP stated that it was unclear whether it would continue to rely upon the alleged beaver dams as an impediment to flow. It had to investigate internally whether that position was consistent with the Regulations and internal policies and practices. Therefore, the parties agreed at that Conference that the first issue to be adjudicated was whether the subject watercourse is an intermittent stream, and not perennial, under 310 CMR 10.58(2). The issue was not limited to whether MassDEP may as a matter of law rely upon beaver dams as an impoundment or other flow reduction that significantly impacts flow. 310 CMR 10.58(2)(a)1.d. Soursourian had the opportunity to address MassDEP's change in position when he submitted his rebuttal testimony. Soursourian was given additional time to submit that rebuttal testimony. He also could have sought leave for more time to address the change in position, if he believed it necessary, but he did not.

None of this is to say that there could not be consequences that flow from MassDEP changing its position in the course an adjudicatory proceeding. As I ruled at the beginning of the adjudicatory hearing, Soursourian could attempt to use MassDEP's changed position for evidentiary purposes, such as attempting to impeach a witness through the use of admissions or prior inconsistent statements. In fact, Soursourian attempted to do that, but it was unpersuasive, in light of the evidentiary problems discussed above. In summary, an overwhelming preponderance of the evidence shows the watercourse is perennial, and not intermittent.

## **II. A Preponderance Of The Evidence Shows The Watercourse Is Not Exempt From Riverfront Area Regulations As A Canal**

Soursourian asserts that even if the watercourse is perennial under 310 CMR 10.58, it should be exempt from the Riverfront Area requirements under 310 CMR 10.58(2)(a)1.g. That provision provides: "Manmade canals (e.g., the Cape Cod Canal and canals diverted from rivers in Lowell and Holyoke) and mosquito ditches associated with coastal rivers do not have riverfront areas." 310 CMR 10.58(2)(a)1.g.

Neither "mosquito ditches associated with coastal rivers" nor "manmade canal" is defined in the Act or the Regulations. A recent decision defined "canal" is an "artificial waterway designed for navigation or for draining or irrigating land." Matter of Robert Zeraschi, Docket No. 2006-115, Final Decision (December 8, 2008). (quoting Webster's Third New International Dictionary, Canal, n. def. 4 (1993)). The term manmade canal generally applies to canals associated with mills and manmade canals "which are not rivers." Matter of Robert Zeraschi, Docket No. 2006-115, Final Decision (December 8, 2008). Thus, a manmade canal is "a watercourse that is artificially created rather than natural in origin and that continues to be operated, maintained, used, or preserved with respect to its original purpose." Matter of Robert Zeraschi, Docket No. 2006-115, Final Decision on Motion for Reconsideration, adopted as

Final Decision on Reconsideration (April 1, 2009); Matter of Gordon, Docket No. WET 2009-048, Recommended Final Decision (March 3, 2010), adopted by Final Decision (March 5, 2010). This definition focuses on the origins as well as the present condition because an artificially created watercourse may evolve into a protected river, "despite its manmade origin." Matter of Robert Zeraschi, Docket No. 2006-115, Final Decision (December 8, 2008)(citing Stimson v. Inhabitants of Brookline, 197 Mass. 568 (1908); accord Matter of Katherine Conroy, Docket No. 97-074R, Final Decision on Remand (October 5, 1999)("nothing in the Act states that these water bodies must be naturally occurring in order to warrant protection") (quoting Justice Martha B. Sosman)); Matter of North Shore Custom Homes, LLC, Docket No. 2000-050, Recommended Final Decision (May 21, 2002), adopted by Final Decision (January 29, 2003)(a stream which is a mosquito control ditch is a stream under the MWPA and Wetlands Regulations).

In sum, Soursourian must show by a preponderance of the evidence that: (1) the watercourse was artificially created rather than natural in origin and (2) continues to be operated, maintained, used, or preserved with respect to its original artificially created purpose. As discussed below, he failed to show either element by a preponderance of the evidence.

Soursourian offered no direct evidence that the watercourse was artificially created. Instead, his expert, Ogren, made a number of assertions that he believes lead to the inference that the watercourse was artificially created. Ogren believes that the watercourse was created to drain upgradient wetlands. He pointed out that the watercourse did not appear on USGS maps until 1972. He theorized that this is because it did not previously exist, and instead was artificially created. There are a number of reasons why that position is not persuasive. First, the prior maps that omit the watercourse also omit other characteristics of that area, like the wetlands the watercourse was purportedly created to drain. White Rebuttal PFT. This indicates the absence of the watercourse and the wetland may have been a mapping error or omission. Or perhaps the watercourse was too small, i.e., of such a scale, that it was purposely omitted on earlier maps. In contrast, the topography is probative of a watercourse naturally occurring, lying and running between two parallel upland areas. White PFT, Ex. 3.

Ogren admitted that the prior USGS maps that omitted the watercourse were also intended to include the wetland areas, which did not appear on the earlier maps. Ogren PFT, pp. 6-8. Ogren speculated that the swamp or wetland area may not have existed previously. Instead, he speculated that the wetland may not have previously appeared because he believes it "likely could have been a result of the gravel operations that occurred throughout this area during the construction of Route 128 . . ." Ogren PFT, pp. 9-10. He testified those gravel operations occurred in the 1950s, but he has no evidence they took place at this specific location. Hearing Testimony 1, 00:33:00. Perhaps even more problematic is that the wetland area first appeared on the 1945 map, years before Ogren believed the swamp was created in the 1950s from gravel operations. Ogren Rebuttal PFT, Table 1. These inconsistencies and the lack of any supporting evidence, renders Ogren's testimony to be conjecture. In fact, at the hearing, Ogren testified that it was possible the wetland and the watercourse were mistakenly omitted from the maps, and that is why they do not appear. Hearing Testimony 1, 00:32:00.

In sum, the omission of the watercourse on historical USGS maps prior to 1972 demonstrates the possibility that the watercourse may not have existed when the maps were issued. It also demonstrates, however, the possibility that those responsible for investigating the terrain and issuing the map, for one reason or another, failed to include the watercourse on the map. See Matter of Adelaide Realty Trust, Docket No., WET 2009-065, Recommended Final Decision (April 26, 2010), adopted by Final Decision (May 4, 2010) (the absence of a watercourse on historical USGS maps was not persuasive evidence that the watercourse was not present when the maps were issued). In fact, White testified that older USGS maps sometimes omitted wetland areas and water bodies like the watercourse at issue. White Rebuttal PFT, p. 14.

Ogren also testified that there is a spoils pile on the east side of the watercourse. Ogren PFT, p. 9. He believes that the spoils pile is material generated from excavation to create the watercourse. He calculated that if the spoils pile were distributed throughout the watercourse the resulting gradient would have been insufficient for water to flow, primarily because the gradient is higher than the upgradient wetlands. Ogren PFT, p. 9. While this is a material piece of evidence, it is not persuasive. There is no evidence concerning when precisely the pile was created. It could have just as easily been created by someone who dredged a pre-existing natural watercourse to remove obstructions or to make it flow more swiftly. In fact, White testified that the alleged spoils appear to be dredge spoils. And the pile had large trees growing on it, indicating that even if the spoils are from maintenance they were not the result of recent work to maintain the original purpose of the alleged canal. White PFT, p. 8. That this is the only substantial pile for the entire length also supports the conclusion that it was generated at a particular location for dredging to remove obstructions to flow at that location. White also testified that the streambed has characteristics of a naturally formed stream, such as unconsolidated gravel. She also testified the banks were undercut, indicating a naturally flowing stream, and not a watercourse that has been maintained as a canal. White PFT, p. 8; Hearing Testimony 1, 1:07:00.

In addition to the above weaknesses with Soursourian’s evidence of a canal, he failed to present any evidence of the second element--that the alleged canal continues to be operated, maintained, used, or preserved with respect to its original purpose.

Soursourian’s reliance on Matter of Zeraschi to show the stream is a manmade canal is misplaced. See Matter of Zeraschi, Docket No. 2006-115, Final Decision, (December 8, 2008), Recommended Decision on Motion for Reconsideration (March 20, 2009), adopted as Final Decision on Reconsideration (April 1, 2009). The facts at issue in Zeraschi are very different from this case, and it is thus easily distinguishable. Zeraschi involved the question of whether Walker’s Brook, formerly known as the "Reading Drainage Canal," was a manmade canal. The Reading Drainage Canal was constructed pursuant to legislation and an eminent domain taking as a manmade canal to enhance drainage. Id. (citing See Mass. Acts of 1939, Ch. 458 (legislation establishing the system of drainage)). The canal’s width, depth, gradient, banks and length were all manmade pursuant to that legislation. It was dredged primarily from land where no stream previously flowed. Indeed, large sections of the channel, including the portion that runs behind Mr. Zeraschi’s property, were excavated from upland. The Main Channel was originally lined with timber and had stop planks to control its flow. Maps and state highway plans labeled the channel as a canal for decades after it was built; the moniker "Walkers Brook" did not appear until much later. Zeraschi, Recommended Final Decision.

Thus, in Zeraschi, there was a clear preponderance of the evidence that the watercourse was a manmade canal. Here, in contrast Soursourian has presented very indirect, isolated pieces of evidence indicating possible scenarios, from which one is supposed to infer the canal is manmade. MassDEP has further undermined that evidence with White’s testimony and argument that other scenarios are just as possible, or more likely. On this state of the record, Soursourian has not come close to providing a preponderance of the evidence in support of his claim that the watercourse is manmade and has been maintained for its original purpose.

**CONCLUSION**

I recommend that the Commissioner issue a Final Decision affirming the SORAD. A preponderance of the evidence demonstrates that the watercourse is a perennial stream. Soursourian failed to present a preponderance of the evidence that the watercourse was intermittent by showing that it was dry or not flowing for four days in a consecutive twelve month period, pursuant to 310 CMR 10.58(2)(a)1.d. Soursourian also failed to present a preponderance of the evidence showing that the watercourse was exempt as a "manmade canal" and had been maintained as such, pursuant to 310 CMR 10.58(2)(a)1.g.

**NOTICE- RECOMMENDED FINAL DECISION**

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for his Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner’s Final Decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner’s office regarding this decision unless the Commissioner, in his sole discretion, directs otherwise.

Date:  
\_\_\_\_\_  
\_\_\_\_\_

Timothy M. Jones, Presiding Officer

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CONCOM

June 13, 2014

1. "PFT" is the acronym for the pre-filed written testimony that each party filed.
2. See November 19, 2013 SORAD letter, attached to November 29, 2013, Notice of Claim and White PFT, Ex. 2.
3. See November 19, 2013 SORAD letter, attached to November 29, 2013, Notice of Claim and White PFT, Ex. 2.
4. See November 19, 2013 SORAD letter (p. 2), attached to November 29, 2013, Notice of Claim.
5. See November 19, 2013 SORAD letter (p. 3), attached to November 29, 2013, Notice of Claim.
6. A stream is "a body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into or out of an Area Subject to Protection Under *M.G.L. c. 131, § 40.*" 310 CMR 10.04 (definition of stream).
7. Even though no party designated Reilly as a witness, she attended the adjudicatory hearing. No prior notice indicated Reilly would be at the hearing. Despite her presence, neither party sought to have her testify.
8. In contrast, a video of floating and partially submerged objects for the entire length of the stream would be a more probative test to gauge stream flow.
9. "Hearing Testimony 1" references the first segment of the digital recording of the adjudicatory hearing, followed by the *approximate* hour, minute, and second where the testimony starts.
10. There is no reliable information in the record identifying where Test Location #3 is located.
11. Despite this change in legal positions, White continued to testify in her direct testimony that the dams were an ephemeral condition that significantly impacted flow.
12. While it is true that the regulation explicitly preserves the perennial designation for otherwise perennial streams that are significantly affected by *manmade* flow reductions or diversions, it does not specifically preclude the use of evidence to show ephemeral conditions that are not a part of the long-term, natural stream hydrology may contribute to flow reductions that are not a part of the usual stream hydrology. Such ephemeral conditions may include beaver dams, fallen trees, and obstructed culverts. It is unnecessary, however, to further address that issue because MassDEP has withdrawn its reliance upon the alleged beaver dams as a basis to preclude a showing of intermittency.
13. In the Pre-Screening/Pre-Hearing Conference I specifically discussed the de novo nature of this adjudicatory proceeding. That is one reason why I framed the first issue to be adjudicated as whether the watercourse is intermittent or perennial, instead of focusing on whether MassDEP could rely upon beaver dams to preclude a finding of intermittency. See Hearing Testimony, 00:9:00; Pre-Screening/Pre-Hearing Conference Report and Order.

[Back](#)



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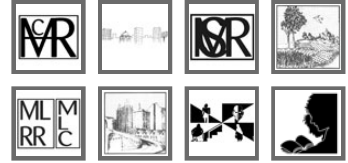
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**Agenda Item # 11**



OFFICE OF PLANNING  
AND ENGINEERING

## TOWN OF MILFORD

52 MAIN STREET, MILFORD, MASSACHUSETTS 01757  
508-634-2317 Fax 508-473-2394  
mdean@townofmilford.com

Michael Dean, P.E.  
*Town Engineer*

August 14, 2020

Mr. Michael Giampietro, Chairman  
Conservation Commission  
52 Main Street, Milford, MA 01757

Re: 23 Gordon Drive (Lot 9)  
Notice of Intent – DEP File #223-

Dear Mr. Giampietro:

The submittal is for a Notice of Intent for the construction of a single-family house lot in a Definitive Residential Subdivision associated with Gordon Drive (South Central Estates II). The applicant is D&F Afonso Builders, 189 Main Street, Milford, MA 01757.

Although 23 Gordon Drive (Lot 9) is one single lot out of the 18-lot definitive subdivision, the development of Lot 9 was discussed during the definitive subdivision approval due to the fact that the lot contains River Front Area (RFA). In this case the RFA is associated with the Charles River. During the original permitting process, the TOTAL square footage / numbers regarding Riverfront disturbance was discussed in depth (on lots 9 & 10) and established under the original permit / Orders of Conditions (for the Subdivision) by this commission. This was all under the DEP File # 223- 1016 and the plans show a total RFA disturbance / alteration of approximately 7,331 S.F., this number represents area on both Lots 9 & Lot 10 with only 600SF of river front disturbance being on Lot 9. The DEP File # 223-1016 is still an open Order of Conditions which has not received a certificate of compliance to date.

Following a review of the recently submitted documents (for Lot 9), I offer the following comments.

1. This recent submittal states the proposed Riverfront Area to be disturbed is 3,800 SF, for Lot 9 only. This number is reflective in the Notice of Intent / paper work, not depicted on the site plan. This exceeds the original permitted total riverfront disturbance by 3,200 SF. If approved the individual Lot filing would essentially be changing the original approval set by this Commission under the approved Order of Conditions for DEP File # 223-1016.

I recommend the applicant address the original permit that was issued for the overall development DEP File # 223-1016, prior to approving the current submittal of lot 9.

Sincerely,

*Michael Dean*

Michael Dean, P.E.  
Town Engineer



# Guerriere & Halnon, Inc.

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**Whitinsville Office**  
1029 Providence Road  
Whitinsville, MA 01588-2121  
(508) 234-6834/Fax (508) 234-6723

Milford Conservation Commission  
Town Hall, 52 Main Street  
Milford, MA 01757

August 3, 2020

RE: Notice of Intent – 23 Gordon Drive (Lot 9)

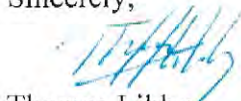
Dear Commission Members:

On behalf of our client, D&F Afonso Builders, we are filing a Notice of Intent for the construction of a single family home and driveway with associated site work and utilities, within the 200 ft. buffer of the Charles River riverfront. Enclosed, please find two (2) copies of the following: completed Notice of Intent, portion of geodetic showing locus, Resource Area Plan and the appropriate filing fee (see attached Notice of Intent transmittal form).

We have also filed one (1) copy of the Notice of Intent package with the Massachusetts Department of Environmental Protection, Central Region, 8 New Bond Street, Worcester, MA 01606. We have also submitted the required filing fee to D.E.P. in Boston.

If you have any questions concerning this filing please contact me.

Sincerely,



Thomas Libby  
Project Engineer



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1029 Providence Road  
Whitinsville, MA 01588-2121  
(508) 234-6834/Fax (508) 234-6723

## **Notice of Intent**

**For**

**23 Gordon Drive (Lot 9)**

**In**

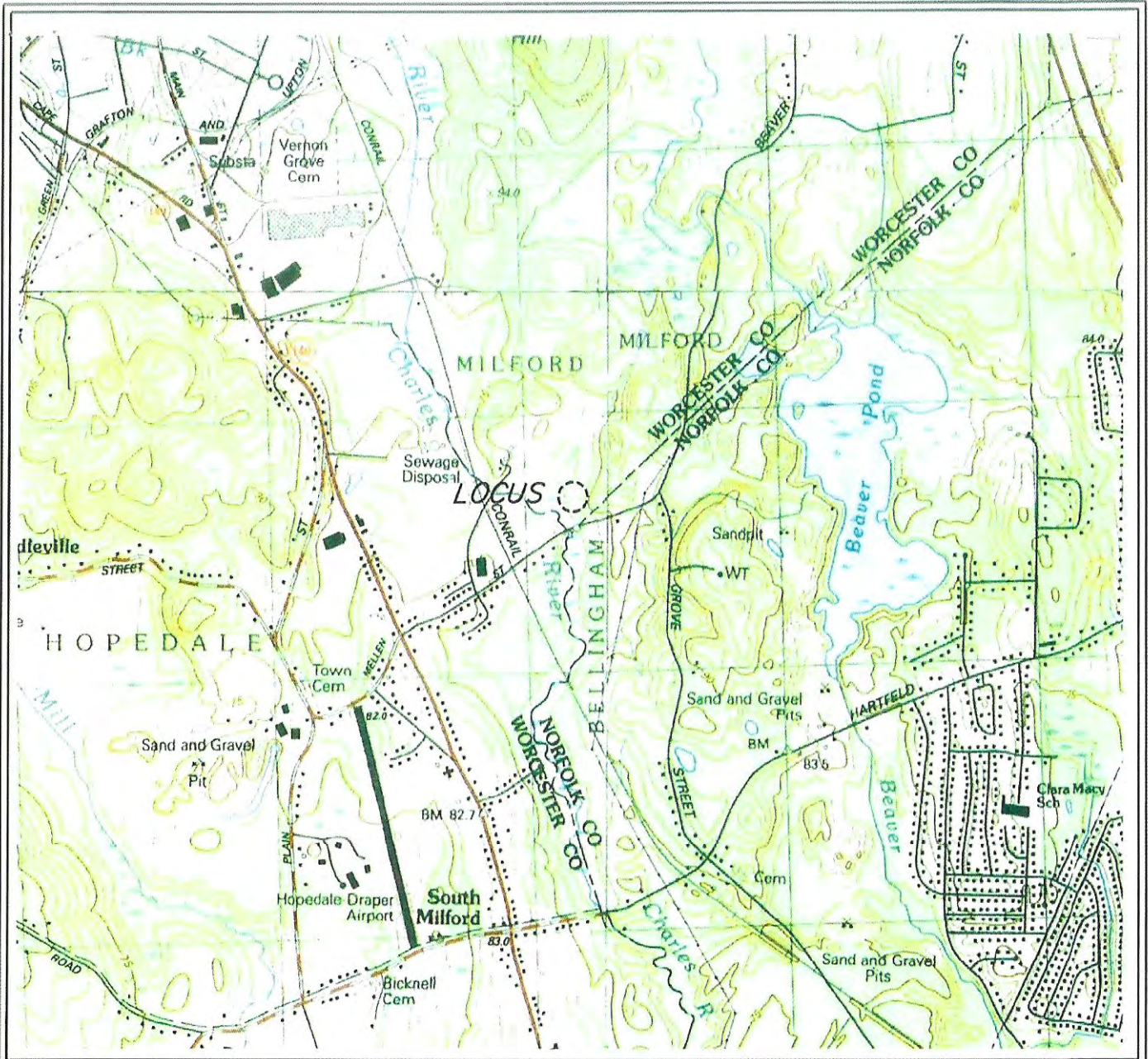
**Milford, Massachusetts**

**August 3, 2020**

Applicant:  
*D&F Afonso Builders*  
*189 Main Street*  
*Milford, MA 01757*

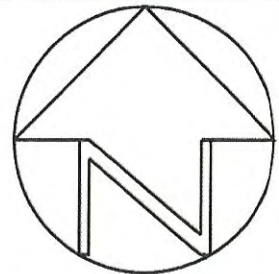
Prepared by:  
*Guerriere & Halnon, Inc.*  
*Engineering & Land Surveying*  
*PO Box 235*  
*Milford, MA 01757*

**Geodetic Map Showing Locus**



U.S.G.S.  
 Quadrangle

Scale: 1"=2000'



LOCUS MAP  
 23 Gordon Drive (Lot 9)  
 Milford, Massachusetts

Date: August 3, 2020

Project No. G-5665-1



**Guerriere  
 &  
 Halnon, Inc.**

Engineering & Land Surveying  
 333 WEST STREET, MILFORD, MA 01757  
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## Resource Area Plan

**G-5665-1**  
**Alternative Analysis**  
**Lot 9 Gordon Drive**  
**Milford, MA 01757**  
**(Map 61 Block 86 Lot 160)**

**Project Overview**

In January 2011, the Milford Conservation Commission issued an Order of Conditions for the Gordon Drive Subdivision located off Beaver Street and Mellen Street associated with construction activities within the Riverfront to the Charles River and the 100-foot Buffer of Bordering Vegetated Wetlands. The proposed work included the construction of a detention basin, restoration of previously disturbed Riverfront and a portion of the Lot 9 single family house. The construction of the detention basin has been completed and completion of the restoration area is expected this fall. A request for Certification of Compliance of MassDEP 223-1016 Orders of Conditions will be submitted at the end of construction.

Individual Notices of Intent and corresponding Orders of Conditions have been issued for the development of each single-family lot within the subdivision where work was proposed within areas jurisdictional to the Wetlands Protection Act. Similarly, this Notice of Intent is being filed for the construction of a single-family house on Lot 9 Gordon Drive, a portion of which is within the Riverfront to the Charles River.

This Alternatives Analysis has been prepared with the Notice of Intent for the proposed development of Lot 9 Gordon Drive in accordance with section 10.58(4)(c)2.b.i. of the Wetlands Protection Act. The previously approved plans with the Order of Conditions DEP File No. 223-1016 depicted, in a general manner, the location of a single-family house driveway and septic system for this lot. The current Notice of Intent includes a more detailed design of the proposed house and associated septic system, driveway and grading.

**Identification of Alternatives Scope**

Section 10.58(4)(c)2.b. states the area under consideration for practicable alternatives is limited to the lot, the subdivided lots and any adjacent lots formerly or presently owned by the same owner for activities associated with the construction of a single family house on a lot recorded after August 1, 1996. Lot 9 is a single lot located within the Gordon Drive Subdivision and is one of two lots within the subdivision containing Riverfront. The Riverfront disturbance within Lot 10 is limited to only the construction of the stormwater basin. In accordance with Section 10.58(4)(d)1, the calculation of square footage of alteration shall exclude areas used for structural stormwater management measures. Effectively, the square footage of alteration of Riverfront within the entirety of the Gordon Drive Subdivision is limited to the proposed construction activities on Lot 9. With the approval of the Order of Conditions for the subdivision, the consideration of practicable alternatives within the extent of the subdivision has already been evaluated and determined to include the construction of a single-family house on Lot 9.

### **Alternative I –Maintaining Intent of Concept from Subdivision Filing**

This alternative maintains the intent of the conceptual development of Lot 9, minimizing disturbance within the Riverfront while providing a proposed house that is economically comparable to the other homes in the subdivision. The footprint of the proposed house shown in the conceptual design was maintained at approximately 1,600 square feet. The garage was revised from an attached (first floor) garage in the conceptual design to a basement level garage in this alternative. By revising the garage to a basement level, the available living space in the home is significantly increased without changing the footprint of the overall home. The driveway was revised to be a side entrance garage to accommodate the lower level garage which increased the total proposed pavement from the conceptual plan by approximately 300 square feet. This alternative includes a septic system designed to accommodate a four-bedroom house. The proposed four-bedroom house is consistent with the rest of the homes within the neighborhood. However, the 4 bedroom design does increase the footprint of the subsurface disposal system shown on the conceptual plan by 190 square feet. The final variation from the conceptual design is an increase of the proposed yard area. This alternative includes an average of 20 feet from the back of the structure to be maintained as a yard area. The proposed yard area provides a reasonable area for the construction of the home and a modest yard.

### **Alternative II – Strict Conformance with Concept from Subdivision Filing**

The conceptual development of Lot 9 shown on the Resource Area Plan approved with the Order of Conditions issued for DEP File No. 223-1016 included a conceptual house box, driveway and septic system. The concept plan depicts a 1,600 square foot footprint for the house, a 960 square foot paved driveway and associated septic system. Upon calculation of the required septic system size based on the soil testing results, the footprint of the septic system shown on the conceptual design would not be large enough to support a 4 bedroom house. The conceptual plan depicts the limit of work an average of 10 feet from the edge of the structure, which is inadequate space for construction of the single-family house structure and provides no practical yard area.

### **Comparison of Alternatives**

The presented alternatives are comparable in the impact to the Riverfront. Section 10.58(4)(d) provides the issuing authority the ability to approve alteration of up to 10% of the riverfront within a lot recorded after October 6, 1997, provided that:

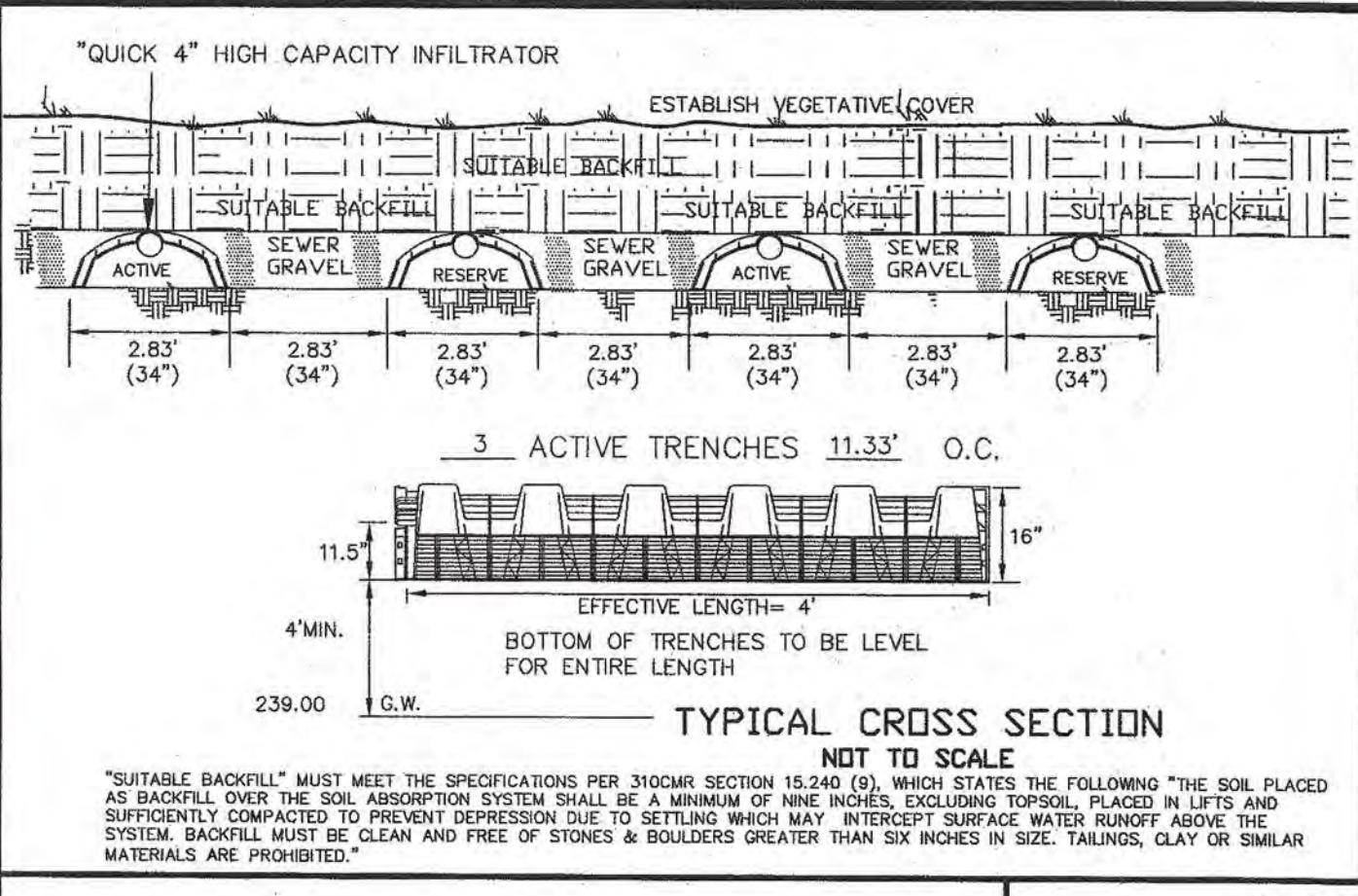
- A minimum 100-foot-wide area of undisturbed vegetation is provided. *Both alternatives provide a 100-foot-wide area of undisturbed vegetation.*
- Stormwater is managed according to standards established by the Department in its Stormwater Policy. *The development of a single-family lot is exempt from stormwater standards.*
- Proposed work does not impair the capacity of the riverfront area to provide important wildlife functions. *Both alternatives disturb only the outer most 25 feet of the Riverfront, leaving 175 feet of Riverfront to continue providing wildlife functions. A portion of the existing Riverfront was previously disturbed up to the 100-foot Riverfront. As part of the Subdivision Order of Conditions, approximately 6,000 square feet of Riverfront will be*

*restored within Lot 9. By enhancing the existing degraded riverfront area, both alternatives will provide an increased protection to wildlife functions from the existing conditions.*

- Proposed work shall not impair groundwater or surface water quality by incorporating erosion and sedimentation controls. *While the conceptual design did not include the same level of detail as the currently proposed design plan does, it can be assumed that both alternatives would provide a septic system meeting Title V requirements, a foundation drain to outlet clean groundwater to the small stormwater basin within the lot, and the use of the same erosion and sedimentation control measures (silt fence, or approved alternative).*

### **Conclusion**

The Order of Conditions issued for the Gordon Drive Subdivision included the evaluation of a conceptual design of Lot 9. The conceptual design showed the viability of developing both Lot 9 and 10 with single family homes without impairing the ability of the Riverfront to continue providing wildlife functions. The alternatives analysis compares a more detailed design (Alternative I) to the approved conceptual design (Alternative II) that has an approximately equivalent impact to the Riverfront and provides a substantially more equivalent product to the other homes in the subdivision. Section 10.58(4)(c)3. of the Wetlands Protection Act requires the applicant demonstrate there are no practicable and substantially equivalent economic alternatives to the proposed development. Furthermore, the section states the issuing authority shall not require alternatives which result in greater or substantially equivalent adverse impacts. Based on the comparison of alternatives completed herein, the development of Lot 9 in strict accordance with the approved conceptual design is not considered economically viable and would present an equivalent impact to the Riverfront. Therefore Alternative I is considered the more practical and economically feasible alternative.



**LEACHING FACILITY DESIGN CRITERIA**

**TITLE V**  
 PERC. DESIGN RATE = 25 MIN./INCH  
 DESIGN FLOW = 4 x 110 = 440 GPD  
 E.L.R. = PERC. RATE FACTOR = 0.40 GPD/SF

**HIGH CAPACITY QUICK 4**  
 EFFECTIVE LEACHING AREA = 7.93 SF/FT  
 CHAMBER LENGTH = 4 FT

**REQUIRED**  
 FLOW = 4 x 110 = 440 GPD  
 AREA = (440 / 0.40) = 1,100 SF CONVENTIONAL  
 = 1,100 x 60% = 660 SF  
 660 SF > 400 SF USE 660 SF  
 = 660 / 4.75 = 139 FT

**PROVIDED**  
 # UNITS = 139 LF / 4 LF/UNIT = 35 UNITS  
 # UNITS = 2 ROWS X 18 UNITS = 36 UNITS  
 EQUIV. LENGTH = 36 UNITS X 4 FT = 144 FT  
 AREA PROVIDED = 144 x 7.93 = 1142 SF  
 FLOW = 1142 x 0.40 = 457 GPD

\*EFFLUENT LOADING AREA (E.L.A.) REDUCTION ALLOWED PER "STANDARD CONDITIONS FOR ALTERNATIVE SOIL ABSORPTION SYSTEMS WITH GENERAL USE CERTIFICATION AND/OR APPROVED FOR REMEDIAL USE"

**FLOW INFORMATION**

|                  |               |
|------------------|---------------|
| TYPE OF BUILDING | RESIDENTIAL   |
| EMPLOYEES        | N/A           |
| DISPOSAL         | N/A           |
| BEDROOMS         | 4             |
| PERSONS          | N/A           |
| OTHER            | N/A           |
| DAILY FLOW       | 4 x 110 = 440 |

USE: 2 ROWS OF 18 UNITS  
 PROPOSED 1,500 GAL. S.T.  
 5 OUTLET D.B.

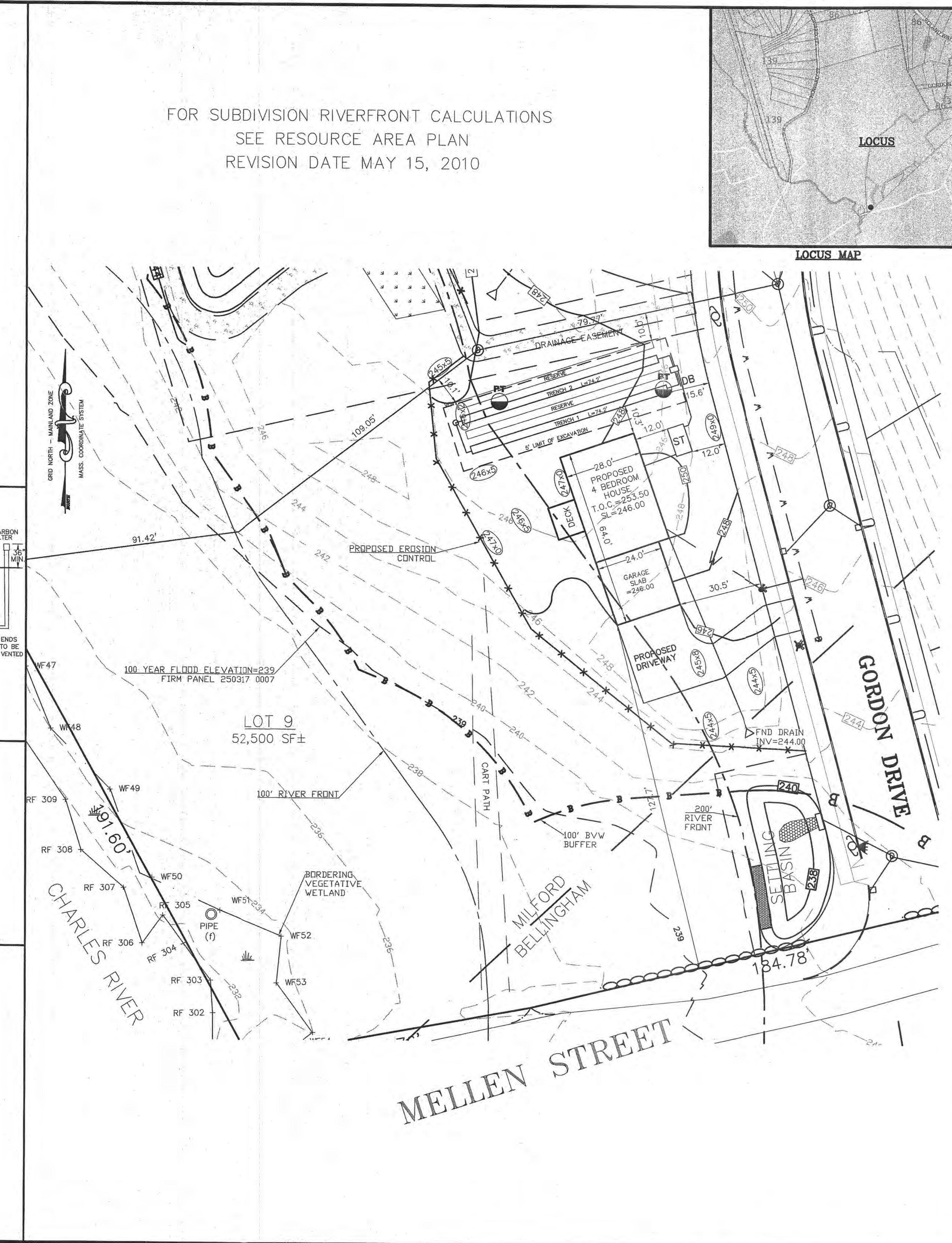
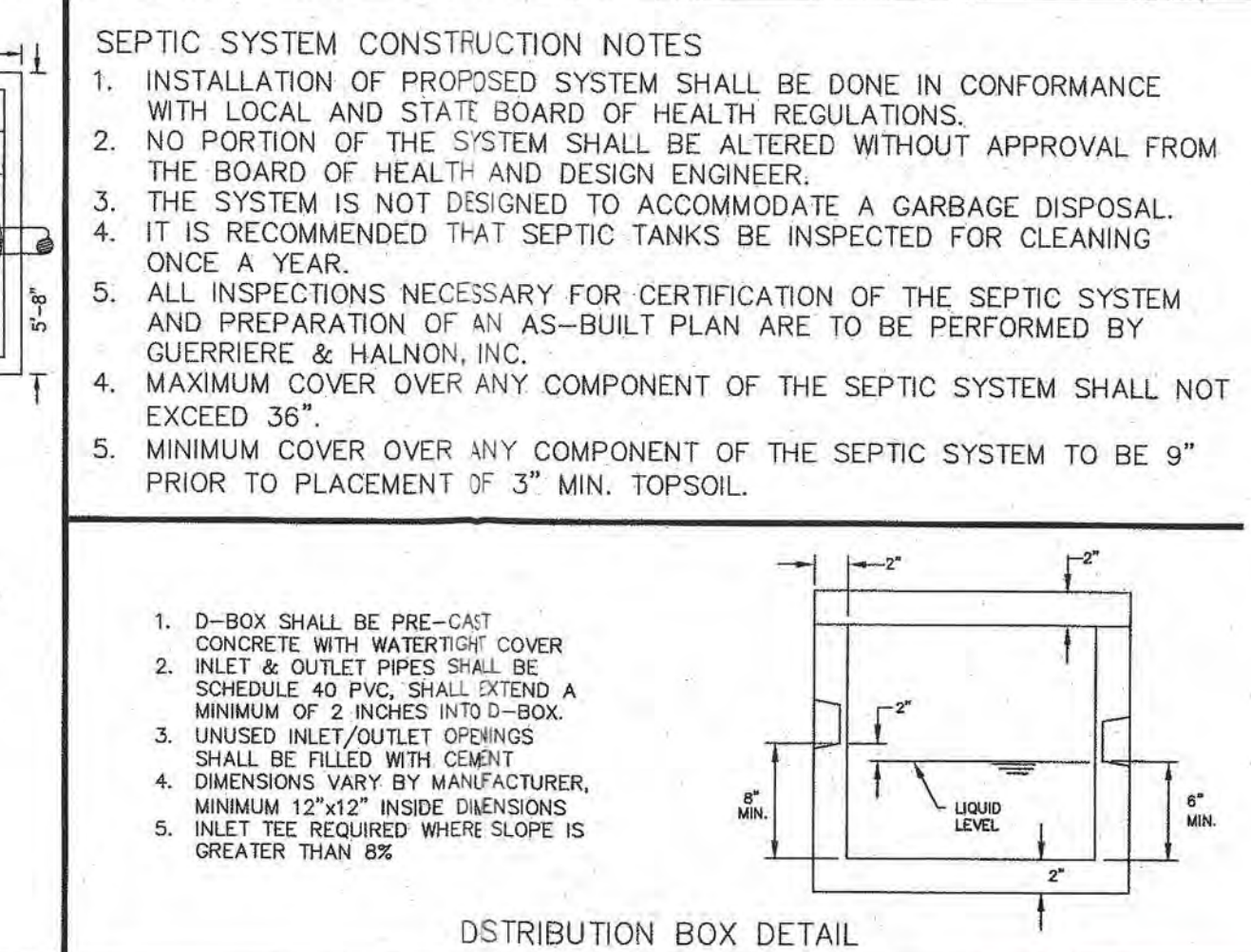
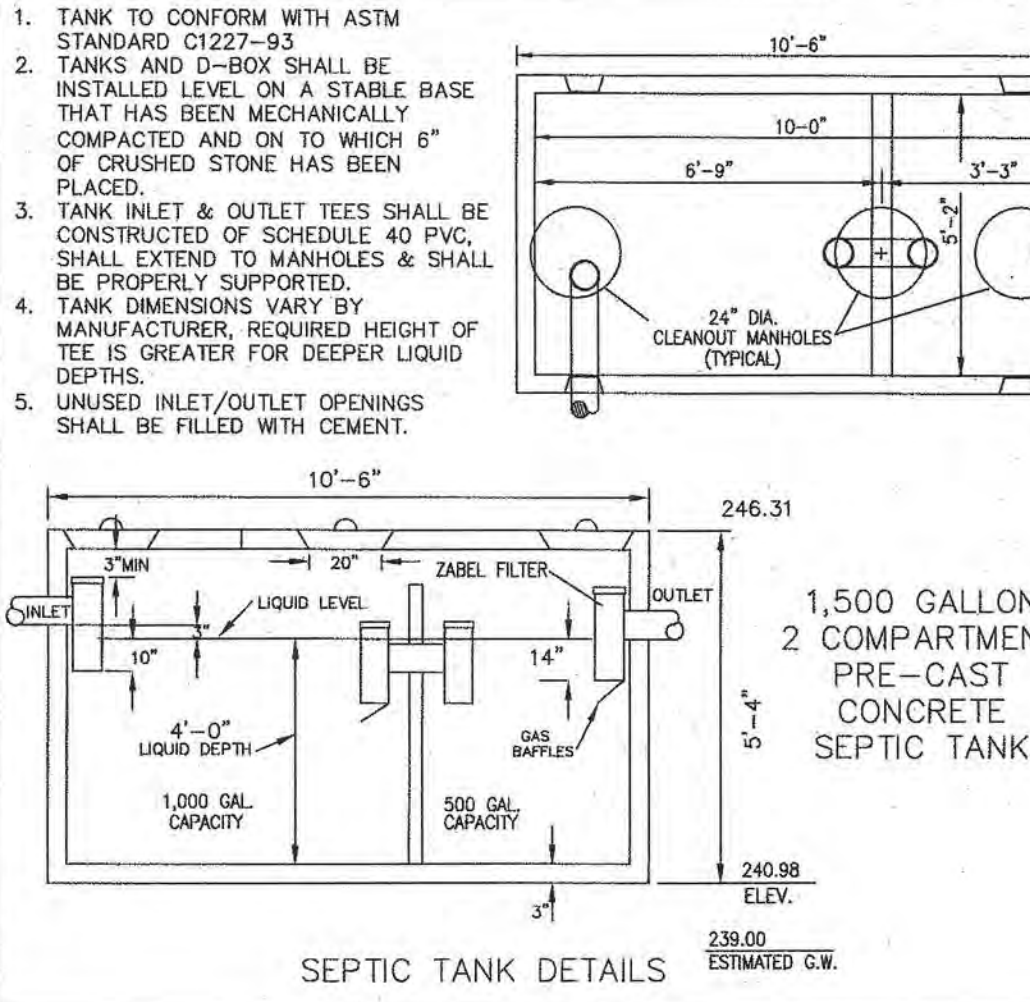
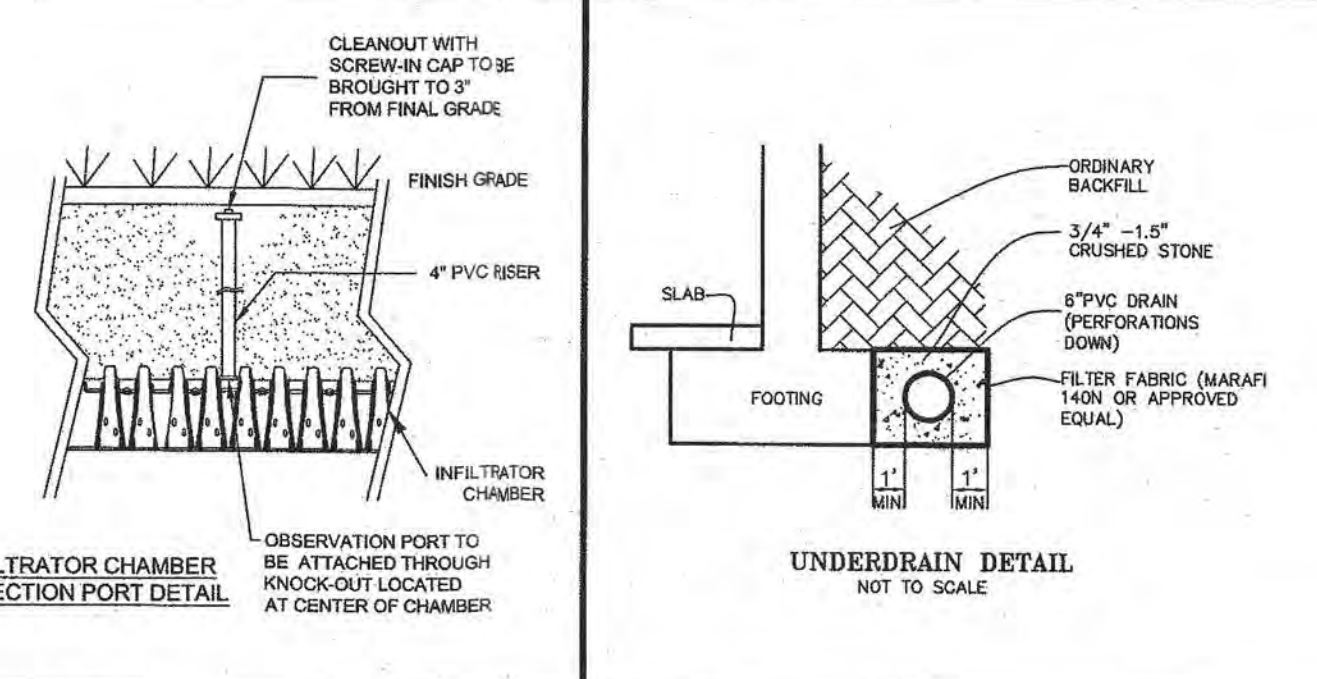
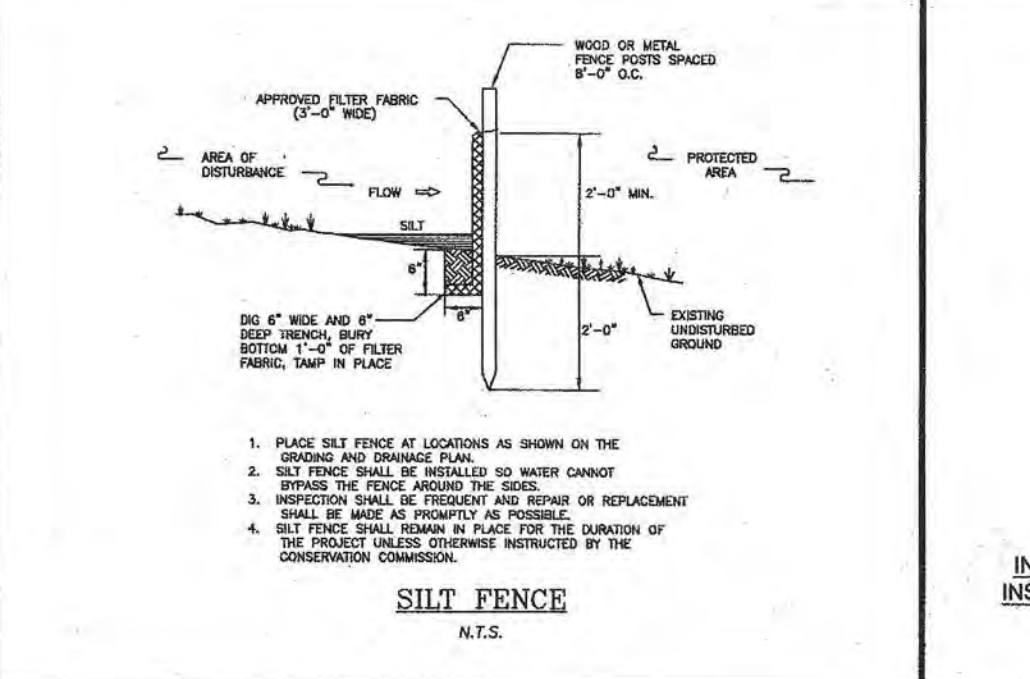
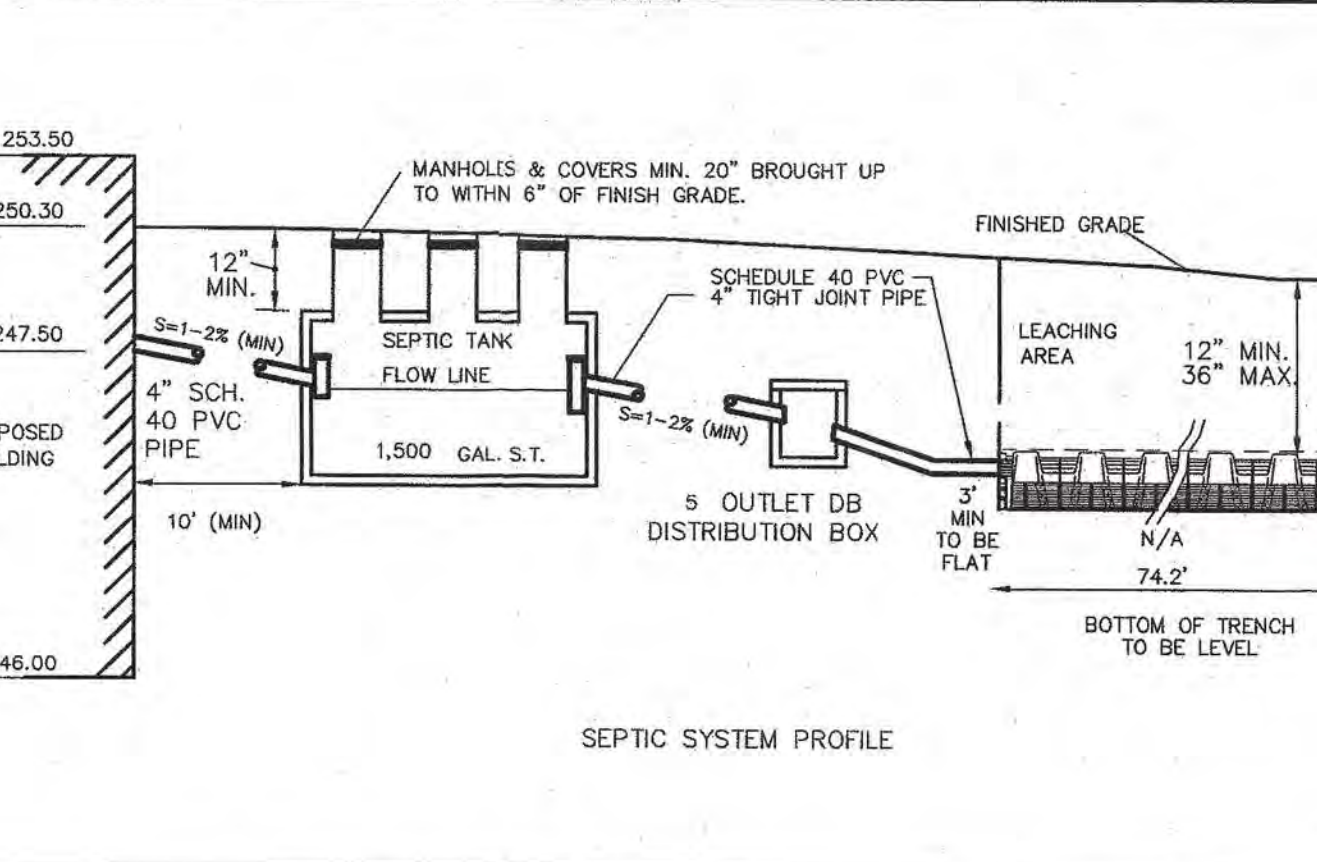
DEEP TESTS TAKEN 11/16/09 BY P.M.L. PERC. TESTS TAKEN 11/16/09 BY P.M.L.

|                             |                             |
|-----------------------------|-----------------------------|
| WITNESSED JOE BATISTA       | WITNESSED JOE BATISTA       |
| SOIL EVALUATOR PETER LAVOIE | SOIL EVALUATOR PETER LAVOIE |

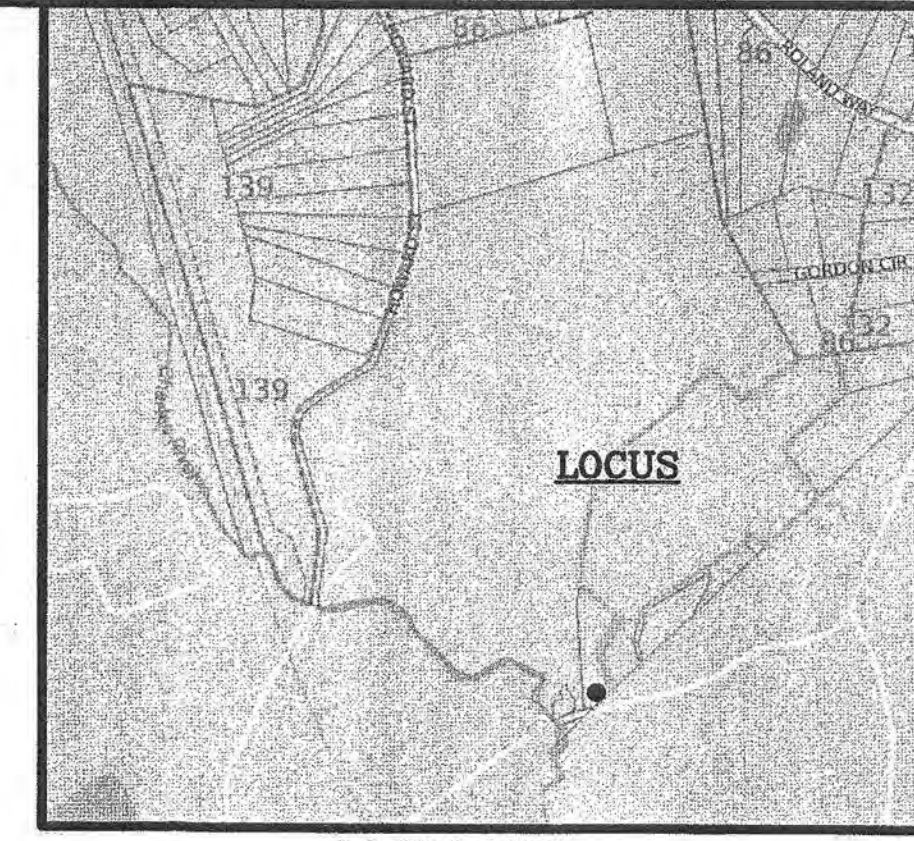
|               |     |       |               |               |        |     |
|---------------|-----|-------|---------------|---------------|--------|-----|
| 246.00 DTH# 1 | N/A | WATER | N/A           | 246.00 DTH# 2 | N/A    |     |
| A LOAM        | 8"  | N/A   | LEDGE         | N/A           | A LOAM | 8"  |
| 245.50        | 5"  | N/A   | MOTTLES       | N/A           | B SILT | 22" |
| 244.00        | 34" | 56"   | PERC          | 56"           | C CL   | 70" |
|               |     |       | CLASS II SOIL |               |        |     |

**DESIGN ELEVATIONS**

|                            |          |
|----------------------------|----------|
| TOP OF FOUNDATION          | 253.50   |
| SLAB ELEVATION             | 246.00   |
| INV. AT FOUNDATION         | 247.50   |
| INV. AT SEPTIC TANK INLET  | 247.12   |
| INV. AT SEPTIC TANK OUTLET | 246.87   |
| INV. AT DIST. BOX INLET    | 245.41   |
| INV. AT DIST. BOX OUTLET   | 245.24   |
| ELEV. TOP OF CHAMBER       | 245.19   |
| INV. AT CHAMBER            | 244.61   |
| BOTTOM OF CHAMBER          | 243.61   |
| ELEV. OF GROUND WATER      | 239.00   |
| ELEV. OF REFUSAL           | n/a      |
| AVERAGE ELEV. OVER SYSTEM  | SEE PLAN |



FOR SUBDIVISION RIVERFRONT CALCULATIONS  
 SEE RESOURCE AREA PLAN  
 REVISION DATE MAY 15, 2010



**MINIMUM ZONING REQUIREMENTS**

|                    |          |
|--------------------|----------|
| ZONING DISTRICT    | RC       |
| AREA               | 45,000SF |
| FRONT YARD SETBACK | 30'      |
| SIDE YARD SETBACK  | 20'      |
| REAR YARD SETBACK  | 30'      |

**PLAN NOTES**

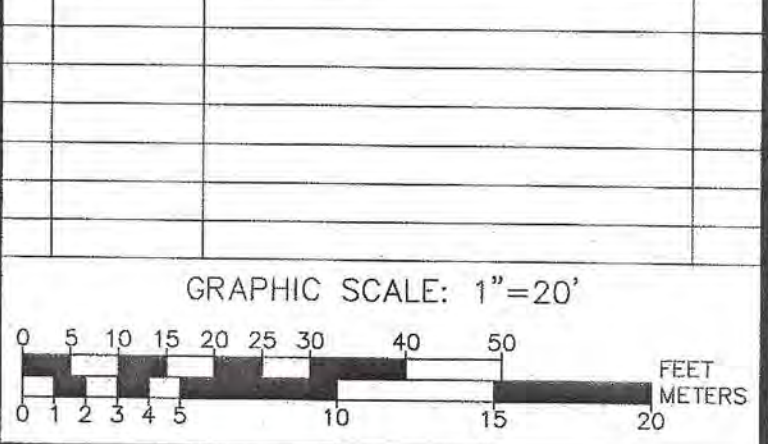
- THIS PLAN REFERS TO TOWN ASSESSORS MAP 61 SHEET 86 LOT 9.
- ELEVATIONS REFER TO AN ASSUMED DATUM.
- OFFSETS ARE NOT FOR THE REPRODUCTION OF PROPERTY LINES.
- CONSTRUCTION ON THIS LOT IS SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY, RESTRICTIONS, RESERVATIONS OR OTHER LIMITATIONS WHICH MAY BE REVEALED BY AN EXAMINATION OF THE TITLE.
- "WARNING" EXISTING UTILITY LINES INDICATED OR NOTED ON THESE DRAWINGS ARE SHOWN AS OBTAINED FROM EXISTING INFORMATION AND ARE ONLY APPROXIMATE IN LOCATION. THE CONTRACTOR SHALL TAKE CAUTION IN THESE AREAS TO AVOID DAMAGE TO EXISTING UTILITY LINES AND/OR HARM TO PERSONNEL ENGAGED IN WORKING IN THESE AREAS. CALL "DIG SAFE" 1-888-DIG-SAFE (1-888-344-7233). EXISTING LINES OTHER THAN THOSE INDICATED ON THESE DRAWINGS MAY BE ON THE SITE. THE CONTRACTOR IS WARNED TO PROCEED WITH CAUTION WITH ALL WORK, ESPECIALLY EXCAVATION WORK, AND TO MAKE ALL POSSIBLE INVESTIGATIONS AS TO POSSIBLE UNMARKED UTILITY LINES.

**KEY**

|                            |       |
|----------------------------|-------|
| SEPTIC TANK                | ST    |
| DISTRIBUTION BOX           | DB    |
| PUMP CHAMBER               | PC    |
| ABSORPTION TRENCH          | T#    |
| EXISTING CONTOURS          | 100.0 |
| PROPOSED ELEVATIONS        | 100x0 |
| EDGE OF WETLANDS           |       |
| BENCHMARK                  | B.M.  |
| PUBLIC WATER               | W     |
| GAS SERVICE                | G     |
| PERC TEST HOLE             | +     |
| DEEP SOIL OBSERVATION HOLE | +     |
| PRIVATE WATER SUPPLY       | W     |
| TOP OF CONCRETE            | TC    |

**OWNER**  
 D&F AFONSO BUILDERS  
 189 MAIN ST.  
 MILFORD, MA

**SEPTIC SYSTEM DESIGN PLAN OF LAND**  
**LOT 9 GORDON DR**  
 IN  
**MILFORD, MA**  
 SCALE: 20 FEET TO AN INCH  
 DATE: AUGUST 3, 2020



**Guerriere & Halon, Inc.**  
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 MILFORD, MA 01757 FX. (508) 473-8243  
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LOT 9 G-5665

G:\CD\Milford\G-5665-1\DWG\Lot 09\G-5665-1 Lot 9 BOHPP REV 01.dwg