

February 12, 2016

BY HAND

Amesbury Conservation Commission
Town Hall
62 Friend Street
Amesbury, MA 01913

RE: **NOTICE OF INTENT – STATE WPA AND LOCAL ORDINANCE**

Applicant: Fafard Real Estate and Development Corp
Project: Village at Bailey’s Pond – Revised, 100-Unit Residential Development
Property: 24 Pond View, 0 Summit Avenue (Maps 87 and 88, Lots 1 and 50)
Owner: City of Amesbury
DEP File No: (New Number To Be Assigned)

Dear Conservation Commission Members:

Fafard Real Estate and Development Corp. (“Fafard”) hereby files a Notice of Intent (“NOI”) seeking an Order of Condition under both the Massachusetts Wetlands Protection Act (the “WPA”) and Amesbury’s Wetlands Protection Ordinance (“Local Ordinance”) for a revised version of its proposed residential development known as “The Village at Bailey’s Pond” (the “Revised Project”) at the above-referenced properties (the “Property”).

The Revised Project presented in this NOI reflects significant modifications to the Project design that the Commission conditionally approved in 2013. The revisions include fewer units (100 v. 136) and fewer buildings (26 v. 34), less cutting, greater preservation and protection of natural buffers and wetland resource areas, more gradual slopes, expanded and improved open space areas, less impervious area (1.68 acres less), and other improvements aimed at addressing concerns previously expressed by the Commission, the Planning Board and Amesbury residents. Significantly, the Revised Project involves no buildings or associated parking areas within the Riverfront Area – a point of significant contention during the previous review proceedings (see Exhibit 12, 2012 Overall Site Plan, Building #10). The Revised Project details are discussed at greater length in Exhibit 13 hereto.

Two preliminary points related to this filing:

- DEP’s Multiple Filings Policy and Pending Appeals: This NOI is filed pursuant to MassDEP’s “Multiple Filings” policy (Wetlands Program Policy 88-3), which permits the filing of multiple NOIs for the same or similar project at the same property in situations such as this – where appeals of previous decisions are pending. Here, administrative and judicial appeals are pending as related to the Commission’s

2013 Order of Conditions and MassDEP's 2014 Superseding Order of Conditions (DEP File No. 02-1015). Fafard is filing this NOI for the Revised Project with the aim of resolving the pending appeals. This filing is made under a full reservation of its rights with respect to those pending appeals.¹

- **Pending Planning Board Process and Expected Revisions to Plans and Stormwater Report:** The Revised Project presented here is also undergoing review by the Amesbury Planning Board. The Planning Board has hired Stantec Engineering as its peer review consultant. Stantec recently issued a comprehensive peer review report, providing comments on the proposed stormwater management system, site plans and other aspects of the Revised Project. In preliminary response, Fafard has submitted to the Planning Board a revised Overall Site Plan (included in this package). The next Planning Board hearing is February 22. After that hearing, Fafard anticipates preparing a comprehensive response to Stantec's peer review comments, revised site plans, and a revised stormwater report. Fafard aims to file those revised site plans and stormwater report with the Commission prior to the March 7 hearing.

I. ENCLOSED MATERIALS

Enclosed are a check for \$4,450 (see the enclosed NOI Wetland Fee Transmittal Form) and eight (8) copies of this cover letter and the following supporting materials:

- **Notice of Intent Form and Attachments**, including:
 - WPA Form 3 – Notice of Intent
 - NOI Wetland Fee Transmittal Form
 - Letter of Authorization from the Owner (City of Amesbury)
 - Locus Figure (USGS map)
 - Natural Heritage map – as printed from Oliver (MassGIS)
 - Notification to Abutters
 - Legal Notification Form
 - Copies of Certified Abutters Lists for the Property – both parcels (100')
 - Copies of Certified Mail Labels as used for the mailing of notifications
- **2016 Revised Overall Site Plan**, by Oak Consulting Group ("OCG"), revised January 28, 2016, to be discussed with the Planning Board on February 22 (11" x 17" and oversized versions enclosed)
- **2015 Project Plans**, by OCG, dated October 1, 2015 (11"x17", plus two large sets)

¹ While Fafard expects the Commission to review the Revised Project in accordance with the Riverfront Area regulatory approach described by MassDEP in its 2014 Superseding Order of Conditions for the previous version of the Project, Fafard reserves its position that this Project should be evaluated exclusively under the redevelopment standards of 310 CMR 10.58(5).

- **Riverfront Area Degraded Area Plan**, by OCG, revised February 15, 2013 (Sheet C-013C)
- **Stormwater Management Study**, by OCG, dated Oct. 2015 (3 Copies Only) – including
 - USGS Site Location Sketch
 - Pre-Development Watershed Plan and Calculations
 - Post-Development Watershed Plan and Calculations
 - MassDEP’s Checklist for Stormwater Report and Treatment Calculations
 - Pollution Prevention and Stormwater O&M Plan
 - Soils Information
- **Background Documents (Bound)**, including the following exhibits:

<u>Exhibit</u>	<u>Documents</u>
1	<u>Commission’s 2013 Order of Conditions (Appeal Pending)</u> – with exhibits including the 2012/2013 project plans
2	<u>MassDEP’s 2014 Superseding Order of Conditions (Appeal Pending)</u>
3	Delineation Reports – Hughes Environmental (2010) and LEC (2004) (submitted with 2010 NOI filing)
4	Narrative Addendum (Hughes Environmental, 1/14/2013), discussing: <ul style="list-style-type: none">• Site Conditions• Riverfront Area• Proposed Project• Proposed Mitigation• Regulatory Analysis – WPA and Local Ordinance
5	Peer Review Report (BSC Group, 1/29/2013)
6	Response to Peer Review (OCG, 2/19/13), with: <ul style="list-style-type: none">• Encl. A – Supplemental Alternatives Analysis• Encl. B – Redevelopment in Riverfront Worksheet• Encl. C – (Sheets C-013C, C-013D, and C-014)• Encl. D – Updated WPA Form 3 pages 2-3• Encl. E – Resource Area Values Analysis
7	Peer Review Report (BSC Group, 4/22/13)
8	Response to Peer Review (Hughes Environmental, 5/1/13)
9	MEPA Certificate – 2010
10	Aerial Locus Figure

- 11 Aerial Photographs – 1966 and 2008
- 12 Overall Site Plan – 2012
- 13 Project Overview and History – Oct 2015

** Exhibit References: Note that references below to numerical exhibits are to the exhibits included in the bound set of “Background Documents.”

II. PROCEDURAL BACKGROUND

As described further in Exhibit 13, Fafard has been engaged in permit proceedings related to this Project since 2004. Most recently, during the 2010-2013 period, the Commission conducted a comprehensive review of the previous version of this Project – a 136-unit multifamily development – with assistance from its peer review consultant, BSC Group. Through an Order of Conditions issued on July 2, 2013 (“2013 OOC”) (copy included in Exhibit 1), the Commission approved the wetland resource delineation established during the Commission’s review process. The Commission also conditionally approved those aspects of the Project outside of the Riverfront Area. However, the Commission denied all work proposed in the Riverfront Area. The Commission disagreed with the view of Fafard’s wetlands consultant that significant portions of the Riverfront Area are degraded and that the Project should be reviewed under the redevelopment standards of 310 CMR 10.58(5).

Fafard filed a Request for Superseding Order of Conditions with MassDEP (State WPA Appeal) and an appeal in Massachusetts Superior Court (Local Ordinance appeal) – challenging the Commission’s decision to the extent it denied those aspects of the Project within the Riverfront Area, and also challenging various other conditions imposed in the Commission’s 2013 OOC.

On January 20, 2014, MassDEP issued a Superseding Order of Conditions denying the Project. MassDEP concluded that the Riverfront Area at the Property contains both degraded and non-degraded areas. MassDEP also concluded that the proposed Riverfront Area activities should be reviewed pursuant to the standards of both 310 CMR 10.58(4) for work in non-degraded Riverfront Areas and 310 CMR 10.58(5) for work in degraded areas. Rather than requesting additional information as part of the SOC review process, MassDEP concluded that further proceedings should be conducted before the Commission with respect to Fafard’s proposed placement of a 4-unit residential building and utilities in the Riverfront Area. Fafard appealed MassDEP’s decision to MassDEP’s Office of Appeals and Dispute Resolution (“OADR”).

The OADR and Superior Court appeals remain pending at this time and have been stayed pending this additional review process. Fafard is filing this application without prejudice to its position in those appeals (all rights reserved).

III. SUMMARY POINTS: UPCOMING REVIEW PROCESS

Fafard is commencing this process through the filing of new NOIs under the State WPA and Local Ordinance. However, Fafard is, in essence, pursuing an amended Order of Conditions. The information developed during the Commission's previous review process during the 2010-2013 period remains relevant to this filing and, therefore, key portions of that administrative record are included with this filing. In addition, through its 2013 Order of Conditions, the Commission approved the wetlands delineation presented in the 2012/2013 plans and as presented in the current plans. Accordingly, there is no basis for re-visiting delineation issues as part of this process.

With respect to changes reflected in the Revised Project, some were driven by concerns unrelated to topics within the Commission's jurisdiction – for example, new building styles, less cutting and grading within the steep slopes along Summit Avenue and Route 150, reducing the number of buildings to minimize the need for retaining walls, etc.... On the other hand, some revisions were driven primarily by concerns expressed by the Commission – for example, removing the previously-proposed Building #10 and associated parking areas from the Riverfront Area.

The Revised Project is discussed in the October 2015 Project Overview included in Exhibit 13, and is also presented in the plans submitted with this filing. Additional details enabling the Commission to better understand how the Revised Project compares to the previous Project with respect to wetland resource impacts will be provided prior to the Commission's March 7 hearing. However, given the changes currently being made to the site layout as part of the Planning Board process, it would be premature to provide those at this time. However, the following basic comparison points are evident and will be further supported prior to March 7:

- The Revised Project involves no buildings or associated parking areas within the Riverfront Area (see former Building #10).
- The stormwater basin previously proposed within the Inner Riparian Zone (near Building #10) has been relocated beyond the first 100'.
- All impacts to the Bank, BVW, Land Under Waterbodies and Bordering Land Subject to Flooding are temporary – relating to the need to install underground sewer/water lines below the stream – and those resource areas will be fully restored. Similarly, all Riverfront Area impacts associated with those underground utilities will be temporary and the impacted areas restored.
- The walking trails proposed within the Riverfront Area will primarily follow existing trails, and many existing trail portions will be restored to natural areas. One paved sidewalk connecting the two development areas has been added within the Riverfront Area – paved so that it can be maintained and accessible during winter months.
- Mitigation proposed within the Riverfront Area will be similar to the mitigation previously proposed (see Exhibits 4 and 8), including invasive species management,

native plantings and topsoil restoration, and wetland restoration to establish an isolated wetland in an area currently formed from tire ruts.

- Outside of the Riverfront Area, the Revised Project involves buffer zone impacts comparable to those associated with the previous Project.
 - The area of alteration within the 0 – 50’ buffer zone has been reduced due to the reduced project footprint.
 - The area of alteration within the 50-100’ buffer zone has increased slightly, partly due to a proposed slightly wider walking path (6’ instead of 4’).
 - Permanent buffer zone impacts involve more building area due to the revised building styles, but significantly less impervious areas associated with drives and parking areas.

As mentioned, prior to the March 7 hearing, the applicant expects to provide updated site plans based on peer review and Planning Board comments. The applicant will also provide additional details related to how the Revised Project compares to the previously-reviewed Project.

IV. WAIVER REQUEST – LOCAL APPLICATION FEE

Fafard respectfully requests that the Commission waive the application filing fee under the Local Ordinance, as specified in Section 13.1 and Appendix A of the Commission’s Regulations. With this filing, Fafard has paid the state and local filing fees as required by the State WPA and DEP regulations (totaling \$8,875). Fafard is also willing to cover all costs associated with hearing notices and reasonable peer review services. Payment of an additional \$8,875 filing fee is not warranted in this circumstance, where this NOI involves a revised version of a project the Commission reviewed comprehensively during the 2010-2013 period and conditionally approved.

We look forward to discussing the Revised Project with the Commission at its March 7 hearing. In the meantime, please call me with any questions. Thank you.

Sincerely,



Jeffrey L. Roelofs

Enclosures

cc: MassDEP-NERO (by Certified Mail)
Amesbury Planning Board (by hand)
John Goldrosen (by email, without exhibits)