



January 11, 2021

Ms. Valerie Oorthuys, Town Planner
Bolton Town Hall
663 Main Street
Bolton, MA 01740

Re: Wetlands Peer Review #2 – Comprehensive Permit Application
Mallard Lane, Bolton MA

Dear Ms. Oorthuys:

The Horsley Witten Group (HW) is pleased to provide the Bolton Zoning Board of Appeals (ZBA) with this follow up letter report responding to the wetlands-related comments from our October 14, 2022 letter regarding the referenced project.

Since this initial report, HW has received the following additional information:

- Letter re: Initial Stormwater & Wetlands Peer Review Comprehensive Permit Application – Mallard Lane, Bolton, MA from Ducharme & Dillis Civil Design Group, Inc., dated December 16, 2021;
- Letter from Norse Environmental Services, Inc., re: Comprehensive Permit Application, Mallard Lane, Bolton, MA dated December 15, 2021; and
- Comprehensive Permit Plan, Mallard Lane, Bolton, MA, prepared by Ducharme & Dillis Civil Design Group, Inc., dated March 11, 2020, and revised through December 16, 2021, which includes:
 - Title Sheet C1.0
 - Existing Conditions Plan C1.1
 - Layout Plan C2.0
 - Grading & Drainage Plan C3.0
 - Grading & Drainage Details 1 C3.1
 - Grading & Drainage Details 2 C3.2
 - Erosion Control Plan C4.0
 - Erosion Control Details C4.1
 - Utilities Plan C5.0
 - Utility Detail Plan C5.1

Our initial technical peer review of the residential development proposed along South Bolton Road for a Comprehensive Permit Plan, involved both a review of the wetlands as well as the stormwater design. This follow-up report addresses only the wetlands response materials received by HW on December 22, 2021, and the letter from Dillis & Roy dated December 16,

2021 states that the wetland comments from HW's October 1, 2021 will be addressed separately. However, the letter from Norse Environmental only addresses HW's Wetlands Review comments 1 and 2. Our response includes our original comment and summarizes the Applicant's response and any further comments in *italicized font*. We have removed photos and references from our October 2021 letter for readability.

Wetlands Review

The Existing Conditions Plan indicates that an isolated wetland area is situated entirely on the property located at 31 Spectacle Hill Road with buffer zones extending onto the project site, including the locally regulated 0 to 25-foot Prohibition Area and the 25 to 100-foot "Adjacent Upland Resource Area" (AURA) as regulated under the Bolton Wetland Bylaw (Chapter 233) (...).

This area is defined on the plans by a series of flagging stations labeled WF A3 through A19; however, there is no indication within the General Notes as to who performed the wetland delineation, and while possibly an oversight, two of the anticipated flagging stations (A1 and A2) which would be in closest proximity to the property line, are notably missing from the plans.

The Conservation Agent has submitted comments to the ZBA recommending that the property needs a wetland delineation, ideally submitted under an Abbreviated Notice of Resource Area Delineation (ANRAD). In these comments, and based upon HW's conversation with the Conservation Agent, we understand that the Applicant had filed a Request for Determination of Applicability (RDA) and received a "Positive 2A" Determination, acknowledging the presence of this wetland area. We understand that there may be additional wetland area(s) on or adjacent to this property which would also confer jurisdictional buffer zones onto this project site (...). We further understand that the Applicant has not yet approached the Bolton Conservation Commission with an application filing.

1. Given the lack of definitive information and missing flagging stations and missing wetlands on the plans, HW recommends that the Applicant at a minimum, seek to have the boundaries of all wetland areas established by a wetland professional and survey located on to the existing conditions plan, and file an ANRAD with the Conservation Commission to confirm the wetland boundary and any other resources that may affect the jurisdictional status of this site under the Massachusetts Wetlands Protection Act and/or the Bolton Wetland Bylaw.

HW (01/11/2022): The Applicant's consultant, Norse Environmental Services, Inc., has responded that the Commission issued a Determination of Applicability on April 23, 2019, and included a copy of a Determination. We note that this determination was issued on July 2, 2019 (not April 23, 2019), and would expire on July 2, 2022, but for the permit tolling guidance issued by the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), which would extend the Determination expiration to October 7, 2023.

The Determination includes the following in the description:

"At this time there is no work proposed. The applicant is inquiring about the boundaries regarding an isolated basin-like area established as a Potential Vernal Pool on NHESP survey."

The Determination also clarifies under the Determination 2a. that the boundary delineations of the following resource areas are confirmed as accurate:

"Solely the isolated basin area/Potential Vernal Pool shown on plans referenced above. At this time, the boundary not inclusive of jurisdictional offsets, are confirmed. The applicant shall file a Notice of Intent for the proposed project inclusive of all wetland resource areas delineated, and their adjacent offsets."

The recently submitted plans include a newly delineated wetland area, the "B-series" which was not part of the Commission's Determination. And although the Applicant's consultant indicates that the area is "too small to be considered a potential or certified vernal pool" and "is unlikely to hold water for a minimum of two months to allow the amphibians to metamorphosis," this has not yet been approved by the Conservation Commission.

HW notes that our original recommendation regarding a filing with Conservation still stands, and that the boundaries of the additional wetland areas shown on the plans will need to be confirmed through the NOI review process or under an ANRAD. Further, and as discussed in our original letter, the vernal pool status of these wetland areas has not yet been determined.

2. Based on HW's calculations from the PDF plans, the isolated wetland area is approximately 10,900 SF (0.25 ac). As part of the wetland resource area determination, the Applicant should also seek to confirm the jurisdictional status of this area as an Isolated Land Subject to Flooding (ILSF).

HW (01/11/2022): The Applicant's consultant has responded that the Applicant will verify the ILSF status during the permitting process with the Conservation Commission.

The remainder of HW's comments regarding the wetland resource areas have not been addressed at this time. We have repeated our original comments here for reference and continuity between comment letters. Our original comments stand.

(...)

HW notes that the isolated wetland area has been identified by the Massachusetts Natural Heritage and Endangered Species Program (NHESP) as a Potential Vernal Pool (PVP #2912) (Image 2).

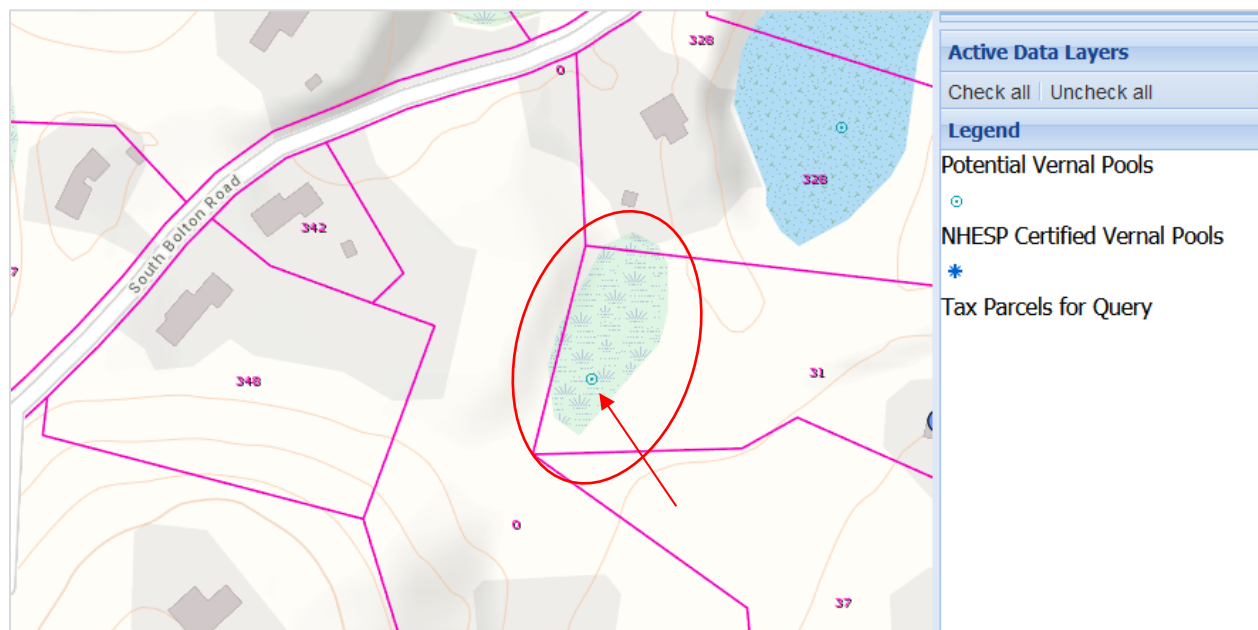


Image 1. Screenshot of MassGIS data indicating that the isolated wetland is identified as a Potential Vernal Pool (PVP).

In speaking with the Conservation Agent, we understand that a local school group has collected sufficient data to certify this wetland area as a state-recognized Certified Vernal Pool. However, in accordance with Section 3.07(3)(e), the Conservation Commission may recognize and regulate vernal pool habitat regardless of its NHESP certification status.

Section 3.07 of the local wetlands regulations defines vernal pools as follows:

(...) Vernal pools are found across the landscape where small woodland depressions, swales or kettle holes collect spring runoff or intercept seasonally high groundwater tables. They may not be connected to other wetlands. Any wetland resource exhibiting these characteristics can be considered a vernal pool and may or may not be certified.

Section 3.07(2) contains a rebuttable presumption:

Where a freshwater wetland's physical characteristics conform to those defined for vernal pool habitat, the Conservation Commission shall presume the existence of a vernal pool and vernal pool habitat. This presumption is unconditional and shall be made notwithstanding certification or lack thereof by the Massachusetts Division of Wildlife and Fisheries and notwithstanding the site might not be located within another Resource Area.

Based upon this, and the information from the Conservation Agent, it is HW's professional opinion that this wetland area meets the presumption under the local regulations as a vernal pool. The Grading & Drainage Plan indicates that portions of the proposed access road, portions of three of the proposed structures, installation of a sewer line, site grading, and construction of a structural retaining wall in closest proximity to the wetland area (i.e., just outside of the 25-foot wetland buffer as shown). Additional work may occur within jurisdiction of

the other wetland area (Photo 6). Finally, the project site entrance will result in grading within the buffer zone to the wetland across South Bolton Road to the north.

3. As the performance standards for work within 100-feet of a vernal pool are more stringent and include a limitation on the removal of trees within 100 feet of a vernal pool, we recommend that the Applicant at a minimum file an ANRAD with the Conservation Commission to confirm the wetland boundary as recommended above, and quantify the removal of trees in this area as well as the amount of disturbance within vernal pool habitat, such that the Town may better understand the environmental implications of the extent of work proposed within the 100-foot buffer. Similar calculations should be presented for the project work within the buffer zone to the other wetland areas.

HW (01/11/2022): Comment stands.

Given the proximity of proposed work within 25 feet of the isolated wetland area, the wetlands regulations under Section 3.02(3) grant discretion to the Conservation Commission to seek mitigation commensurate within the scope of the project.

4. Should the Town determine that the project has met its burden for avoiding and minimizing impacts to resource areas and the AURA, we recommend that the Town consider appropriate mitigation measures for this project site.

HW (01/11/2022): Comment stands.

Once the Applicant has provided this additional information to the Town, HW may have additional comments regarding the protection of wetland resource areas and specifically on the local interests protected under the local wetlands bylaw and regulations.

Relief Sought from Local Wetlands Bylaw and Regulations

5. HW recommends that the Applicant specifically state if it is seeking relief from the local bylaws as part of the Comprehensive Permit application, including under §233 – Wetlands to allow for alterations within the adjacent upland resource areas (AURA).

HW (01/11/2022): Comment stands.

The local wetlands bylaw requires that the Applicant consider project alternatives:

Where the presumption set forth in Section 1.18.2 is not overcome, the Applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on the interests identified in Section 1.18.1. Further, the Applicant shall prove that the work including proposed mitigation will have no significant adverse or cumulative adverse effect on the resource areas or resource interests.

6. HW recommends that the Town take into consideration the need for the Applicant to demonstrate to the satisfaction of the Conservation Commission that all efforts have

been made to avoid and minimize resource area and local buffer (AURA) alterations when reviewing the Comprehensive Permit application.

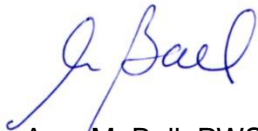
HW (01/11/2022): *Comment stands.*

Conclusions

HW recommends that the Bolton Zoning Board of Appeals require that the Applicant provide a written response to address these comments as part of the permitting process. The Applicant is advised that provision of these comments does not relieve him/her of the responsibility to comply with all Commonwealth of Massachusetts laws, and federal regulations as applicable to this project. Please contact Janet Carter Bernardo (jbernardo@horsleywitten.com) or Amy Ball (aball@horsleywitten.com) or at 508-833-6600 if you have any questions regarding these comments.

Sincerely,

Horsley Witten Group, Inc.



Amy M. Ball, PWS, CWS
Senior Ecologist