

MARCH 6, 2023

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Lauren Vivier  
Town of Spencer Conservation Commission  
Spencer Town Hall  
157 Main Street  
Spencer, MA 01562

**RE: Wetlands Peer Review  
10 Meadow Road, Spencer, MA**

Dear Ms. Vivier and Members of the Commission,

BSC Group, Inc. (BSC) is pleased to provide this report based on our Wetland Scientist Peer Review of the Notice of Intent for work proposed at 10 Meadow Road in Spencer (the Project) consisting of a proposed additional building, reconfiguration of parking, and improved stormwater management on a site with an existing commercial building and paved parking lot. The Owner/Applicant for this Project is Latour Realty LLC of Charlton, MA.

This report presents the findings and comments of a BSC Senior Ecologist relative to the Project's compliance with the Massachusetts Wetlands Protection Act (WPA) and its associated regulations (310 CMR 10.00 *et seq.*) and the Town of Spencer General Bylaws (Article 7) and the Conservation Commission Rules and Regulations and is based upon materials that have been provided to BSC for this peer review, GIS data publicly available through MassGIS as well as Google Earth imagery and other sources, and BSC has further based this Peer Review on the results of two site visits held to date. This Peer Review Letter Report does not include the Engineering Peer Review comments from BSC's Senior Engineer but will be updated with those comments when available.

### **Project Review History**

BSC was engaged to conduct wetland scientist and engineering peer review services for the Notice of Intent for proposed work located at 10 Meadow Road in Spencer beginning in March 2021. An initial site visit was conducted March 23, 2021, and initial peer review Letter Report delivered to the Conservation Commission on March 29, 2021 (see attached). A Change Order (CO-1) was filed with the Conservation Commission on August 31, 2021, following determination that the original filing had significant deficiencies and would require additional scope of services for the peer review of the project. CO-1 included budget for a second site visit and additional document review.

New materials were submitted to BSC in late August and early September of 2021, including an unrevised copy of the December 2020 Notice of Intent, Site Plan dated August 14, 2020 and revised August 11, 2021 and a revised Drainage Report dated December 29, 2020 and revised August 16, 2021. BSC conducted a second site visit with the Applicant and Conservation Agent and members of the

Commission on September 20, 2021. An email summary of the results of the second site visit was sent to the Conservation Agent on September 20, 2021. Outstanding comments are summarized below. The Applicant has not replied in writing to either the initial peer review letter or comments following the September 20, 2021 site visit.

On July 27, 2022, Glenn Krevoski of EBT Environmental Consultants, Inc. contacted BSC to restart peer review of the project. A Site Plan titled “Overall Site Plan Plan” dated January 25, 2021, was received in August 2022, after which BSC was told by the Conservation Agent to anticipate a delay in the project and to wait further instruction prior to beginning the peer review. Additional submissions in December 2022 included a Hydraulic/Hydrological Calculations report, dated December 29, 2020, and revised December 13, 2022, and revised “Definitive Site Plan,” dated August 14, 2020 and last revised December 12, 2022. In February of 2023 an Alternatives Analysis, dated January 25, 2023, with copies of the Definitive Site Plan and Hydraulic/Hydrological Calculations report were received by BSC along with instruction to conduct the peer review.

## **Basis of Review**

### *Initial Submittal, March 2021*

- Notice of Intent, Summit Engineering & Survey, Inc., dated December 29, 2020, 47 pages
- Notice of Intent, Summit Engineering & Survey, Inc., dated December 29, 2020, 49 pages
- “Definitive Site Plan,” Summit Engineering & Survey, Inc., dated August 14, 2020
- Spencer Stormwater Permit Application Checklist, not dated
- Notification of Wetlands Protection Act File Number, MassDEP, CE 293-1007, dated 1/27/2021

### *Additional Submittal, August 2021*

- Notice of Intent, Summit Engineering & Survey, Inc., dated December 29, 2020, 49 pages
- “Definitive Site Plan,” Summit Engineering & Survey, Inc., dated August 14, 2020, revised August 11, 2021
- Hydraulic/Hydrologic Calculations, Summit Engineering & Survey, Inc., dated December 29, 2020, revised August 16, 2021

### *Additional Submittal, August 2022*

- “Overall Site Plan Plan,” Summit Engineering & Survey, Inc., dated January 25, 2021

### *Additional Submittal, December 2022 and February 2023*

- Hydraulic/Hydrologic Calculations, Summit Engineering & Survey, Inc., dated December 29, 2020, revised December 13, 2022 by Tauper Land Survey, Inc.
- Definitive Site Plan, Tauper Land Survey Inc., dated August 14, 2020, last revised December 12, 2022
- 10 Meadow Road, Spencer – 310 CMR 10.58(4): Alternative Analysis, EBT Environmental Consultants, Inc., dated January 25, 2023

## **Existing Conditions**

The subject Site is approximately 2.58 acres in size and bound to the west by Meadow Road. An unnamed perennial stream runs east-to-west through the Site, dividing the undeveloped northern portion of the property from the southern portion. South of the stream the Site has an existing building and paved

parking lot occupying approximately one (1) acre. Along the river to the north and east of the building and parking there is approximately 0.4 acres that is currently maintained as open field/mown area which has been maintained as such at least since 1997, based on aerial photographs presented by the Applicant and verified by BSC. An aerial photograph from the mid-1980s was also provided but is less conclusive as to the condition of the Site at that time. A colonial-era dam is identified at the south-east corner of the Site and essentially demarcates the eastern extent of existing disturbance on the Site.

The entire Site, excepting approximately 1,200 square feet at the south-west corner at Meadow Road, is located in Riverfront Area. The existing parking lot and mown areas are primarily located within the 100-foot inner riparian zone, and the existing building is located within the outer riparian zone. Bordering Vegetated Wetland (BVW) occurs along the north bank of the perennial stream. The south bank of the perennial stream on the parcel is deeply incised and does not have associated BVW, but immediately off-Site to the east of the colonial-era dam there is a small amount of BVW west of the mean annual high-water (see comment 2-3).

The Site is partially located within an Aquifer Protection Zone, consisting of essentially the western half of the property.

## Technical Evaluation

BSC has received a Notice of Intent package dated December 29, 2020, and prepared by Summit Engineering & Survey, Inc. BSC notes that there is no Spencer Notice of Intent Application Review Checklist, Spencer Application Process Signature Form, or Project Narrative included in the Notice of Intent filing.

**Comment 2-1:** BSC recommends that the Applicant complete and submit the Spencer Notice of Intent Application Review Checklist, Spencer Application Process Signature Form, and a Project Narrative to meet state and local application filing requirements. The Application Review Checklist should be used to verify that all materials required for local permit approval are included in the filing.

The WPA Form 3 indicates that the Project is a Buffer Zone Only project. The entire Site is located within Riverfront Area, a jurisdictional resource area regulated under both the Wetlands Protection Act and Town of Spencer Wetland Protection Bylaw.

**Comment 2-2:** The WPA Form 3 should be corrected to indicate that there is work within Inland Resource Areas, by checking box B.2.

## Peer Review Comments

Based on a site visit conducted September 20, 2021, discussions in the field, and a review of the revised materials received in August 2021, BSC summarized its further comments in an email to Lauren (Tifone) Vivier dated 9/20/2021 as noted above. An additional BVW was observed on the south flank of the site between the colonial-era dam and WF#A127 through WF#A132. We saw evidence of hydric soils and a preponderance of wetland plants.

**Comment 2-3:** The revised Definitive Site Plan (12/12/22) does not show this Bordering Vegetated Wetland. The Applicant should provide a wetland data form supporting their contention that this area is not jurisdictional Bordering Vegetated Wetland.

We note that mean annual high-water (MAHW) and Wetland Flags are represented by the same flag locations along the south bank of the perennial stream on the site. At WF#A120 through WF#A123 there is inconsistency with the topographic lines showing the steeply incised bank.

**Comment 2-4:** The Applicant should verify whether MAHW and BVW flags are properly located in the vicinity of WF#A120 through WF#A123.

We did note potential additional wetland area in the southwest corner of the site where equipment is currently stored [approximately where the 106-elevation label occurs on the Definitive Site Plan, Sheet 2]. Bitter Dock, *Rumex obtusifolius* is a FAC plant and covered most of the area, along with sedges and other plants. We did not dig a soil pit but auger plugs showed hydric soil characteristics. This area may not qualify as jurisdictional wetland under state regulations but appears to likely meet the definition of Wetland under the local bylaw at Section 1.5.

**Comment 2-5:** The Applicant should review the area south of the paved portion of the lot in the vicinity of the “106” elevation label on the Definitive Site Plan, Sheet 2 and provide a DEP delineation plot data sheet to support exclusion of the area from delineated wetlands.

All wetlands on the site will have an associated 100-foot state and local Buffer Zone and a local 25-foot No Touch zone.

**Comment 2-6:** The Applicant should show the Spencer 25-foot No Touch local buffer on the Site Plan.

**Comment 2-7:** All work should be removed from the 25-foot No Touch local buffer. The Applicant will need to show that any work proposed in the 25-foot No Touch zone will have no adverse impact to the functions and characteristics of the resource area or seek a variance under Section 7 of the local regulations.

The stream on site is perennial, based on information contained on the most current USGS topographic map.

**Comment 2-8:** The “Approx. Location of Intermittent Stream” label should be removed from the Definitive Site Plan.

On July 27, 2022, Glenn Krevoski, EBT Environmental Consultants, Inc. reached out to BSC to request a site visit at the Project Site. Following receipt of the “Overall Site Plan Plan,” Summit Engineering & Survey, Inc., dated January 25, 2021 on August 1, 2022, BSC sent an email to Mr. Krevoski to provide guidance on issues that had been identified during previous review and that remained unaddressed on the Site Plans including the following comments:

The Revised plan sheet received on August 1, 2022 is dated January 25, 2021 which is actually a sheet dated earlier than the last Definitive Site Plan sheet dated August 14, 2020, revised August 11, 2021 that we reviewed in August of 2021.

**Comment 2-9:** The multiple plan sets that have been received during the review of this Project create significant confusion. BSC recommends that the Applicant provide a statement identifying the complete project materials that should be reviewed by the Commission for this Project.

## Work in Riverfront Area

The entire site is located within the 200' Riverfront Area. The Project is therefore subject to review under 310 CMR 10.58. The Applicant claims that the Project is subject to review under 310 CMR 10.58(5): Redevelopment Within Previously Developed Riverfront Areas; Restoration and Mitigation. BSC has reviewed the materials provided by the Applicant in support of its position including historic aerial images of the Site as discussed in Existing Conditions above.

The regulations do not define “previously developed.” Until there is an adjudication of the relationship between previously developed riverfront area and the presence of degraded riverfront, the status of a Site such as that under review at 10 Meadow Road remains debatable. The regulations evaluate work proposed on a discrete Site. There is clearly development on the Site at 10 Meadow that has been there since the Rivers Protection Act was passed, but whether work proposed on the portion of the Site that is maintained as lawn should be subject to the redevelopment standards at 310 CMR 10.58(5) or should be required to meet standards at 310 CMR 10.58(4) is not certain.

The “Notification of Wetlands Protection Act File Number” email (MassDEP, January 27, 2021) stated that the portions of the project proposed “within areas of apparent lawn and other vegetation...do not meet the definitions of degraded as viewed through the lens of redevelopment of [riverfront area].” MassDEP decisions and statements contained in reviews of similar scenarios, including projects in Winchester (2010) and Methuen (1999) reinforce the comments in the file number notification. In these statements and decisions, MassDEP makes the case that only portions of Riverfront Area that are *presently* degraded according to definition located at 310 CMR 10.58(5) (i.e., that have impervious surfaces) may be reviewed as a redevelopment of previously developed Riverfront Area, but that work proposed in any portion of the Riverfront Area that is not presently degraded must meet the review criteria at 310 CMR 10.58(4), including an alternatives analysis in accordance with 310 CMR 10.58(4)(c)3., “geared towards reconfiguring the site layout...so that as much as the project as feasible is located outside of the riverfront area.”

According to 310 CMR 10.58(5), “a previously developed riverfront area *contains* areas degraded...by impervious surfaces...” The regulations do not state that a previously developed riverfront area is defined by the presence of degraded riverfront area. Further, 310 CMR 10.58(5)(a) states that “[w]hen a lot is previously developed but no portion of the riverfront area is degraded, requirements of 310 CMR 10.58(4) shall be met.” Therefore, a Site can both be “previously developed” *and* have non-degraded riverfront area.

Given the history of the site and the language contained at 310 CMR 10.58(5), BSC concurs with the Applicant’s assessment that the project constitutes a redevelopment of previously developed Riverfront Area as defined in the Massachusetts Wetlands Protection Act at 310 CMR 10.58(5), and therefore should be reviewed under the Redevelopment within Previously Developed Riverfront Areas; Restoration and Mitigation section, 310 CMR 10.58(5).

Accordingly, the Commission may allow work to redevelop previously developed riverfront area, which includes “reuse of degraded or previously developed areas.” Redevelopment may be allowed, “provided that the proposed work shall result in an improvement over existing conditions of the capacity of the riverfront area to protect the interests [of the Act],” (310 CMR 10.58(5)(a)).

**Comment 2-10:** The Applicant must demonstrate how work including new impervious surfaces from the proposed warehouse and the proposed gravel areas meet the standard at 310 CMR 10.58(5)(a) of improvement over existing conditions of the capacity of the riverfront

area in its present condition (i.e., mown vegetation) to protect the interests of the Act. This is not a standard that can be met by restoration and mitigation at 310 CMR 10.58(5)(f) or (g).

It should be noted that while the entire site is subject to review as a redevelopment project in Riverfront Area, only that portion of the Site that is currently impervious (building and paved areas) are “degraded” as defined in the Regulations. While “previously developed,” the grass portion of the site does not meet the definition of “degraded” at 310 CMR 10.58(5):

“A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from *existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds*,” (emphasis added).

Within the southeastern section of the Site where new building and gravel area is proposed, there is currently no degraded riverfront area. Existing conditions consist of maintained lawn.

**Comment 2-11:** It is BSC’s opinion that the proposal does not meet the standards at 310 CMR 10.58(5)(c) because any new structure located within the portion of the site currently maintained as lawn constitutes work that is closer to the river than existing conditions relative to the riverbank along the east side of the Site, existing parking at the south of the Site notwithstanding. Compliance with these standards will rely on meeting the requirements of 310 CMR 10.58(5)(f) or (g).

**Comment 2-12:** It is BSC’s opinion that the proposal does not meet the standards at 310 CMR 10.58(5)(d) because proposed work is not located outside the riverfront area or toward the riverfront area boundary and away from the river. Compliance with these standards will rely on meeting the requirements of 310 CMR 10.58(5)(f) or (g).

The criteria for redevelopment of Riverfront Area at 310 CMR 10.58(5)(e) is that “[t]he area of proposed work shall not exceed the amount of degraded area, provided that the proposed work may alter up to 10% if the degraded area is less than 10% of the riverfront area, except in accordance with 310 CMR 10.58(5)(f) or (g).”

The Riverfront Area calculations table on Sheet 4 of 8 in the Definitive Site Plan shows “Total Riverfront Area Credit” of 13,172.5 sf. There is a note next to the graphic scale that states “Total Altered Area” of 14,713 sf.

**Comment 2-13:** The Applicant should explain what the Total Riverfront Area Credit is and clarify what the reported Total Altered Area relates to.

The Riverfront Area Calculations table also shows “Total Restoration of 0’-100’ RFA On-site” as 2,764 sf.

**Comment 2-14:** There are no details supporting a claim of restoration of inner riparian zone on the site. The area proposed for stormwater management should not be considered a restoration area.

The Riverfront Area calculations table on Sheet 4 of 8 shows “Total Riverfront Area on Property” as 104,593 sf, and “Total 0’-100’ Riverfront Area on Property” as 51,315 sf and “Total 100’-200’ Riverfront Area on Property” as 21,849 for a calculated total of 73,164 square feet of total RA on the Site. The proposed “Total Alteration within 0-100’ Riverfront Area” is 6,558 sf, and “Total Proposed Alteration



within 100'-200' Riverfront Area is 1,733 sf, totaling 8,291 sf. The plan sheet has a label showing "New Degraded Riverfront Area" as 7,962 SF (see label at MAHW11 flag).

The Notice of Intent prepared in December 2020 shows alteration of 37,777 square feet of inner riparian area and 24,606 square feet of outer riparian area alteration, resulting in a proposed alteration of 52% of the total Riverfront Area on the site.

**Comment 2-15:** The Applicant should verify all riverfront area measurements for the site and provide corrected figures for existing and proposed riverfront area alterations. These are necessary for evaluating compliance with performance standards at 310 CMR 10.58(5).

Following clarification of the work proposed, it will be possible to evaluate the Project against requirements in the WPA regulations and Bylaw. BSC is in receipt of the Notice of Intent for the property at U24-17 Meadow Road filed with the Town of Spencer Conservation Commission that is intended to satisfy the requirements of 310 CMR 10.58(5)(g) for the Project at 10 Meadow Road, reviewed herein. Subsequent to the revision of existing and proposed conditions within the Riverfront Area on 10 Meadow and receipt of a signed contract to conduct peer review of the U24-17 Notice of Intent, BSC will evaluate adequacy of the restoration proposal at U24-17 to meet performance standards for the 10 Meadow Road project.

### Stormwater Management Review

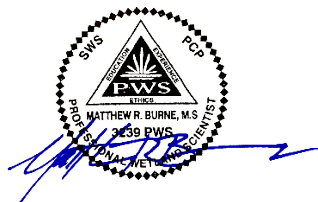
As noted above, BSC will conduct a review of the Project's compliance with the Massachusetts Stormwater Management Standards in a subsequent update to this peer review letter report. However, BSC notes that the proposed stormwater management swale is located as little as five (5) to ten feet from the bank of the river for its entire length of approximately 250 feet. This is clearly well-inside the local 25-foot No Touch zone and may serve overall project stormwater management goals but does not necessarily advance the purposes of the Wetlands Protection Act and Town of Spencer Wetlands Protection Bylaw's interests in protecting jurisdictional wetland resources.

**Comment 2-16:** BSC strongly recommends reconsideration of the proposed configuration of stormwater management features for the Site to reduce its proximity to the perennial stream to the greatest extent possible.

Please do not hesitate to contact me at 617-896-4594 (office), 857-234-2476 (cell), or at [mburne@bscgroup.com](mailto:mburne@bscgroup.com) with any questions or concerns you may have. BSC appreciates the opportunity to be of assistance.

Sincerely,

BSC Group, Inc.



Matt Burne, PWS  
Senior Ecologist