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October 12, 2021

*Via E-Mail: schilcott@townofpembrokemass.org
And First Class Mail*

Frederick Casavant IV, Chairman
c/o Sabrina Chilcott
Pembroke Zoning Board of Appeals
100 Center Street
Pembroke, MA 02359

**Re: River Marsh – Comprehensive Permit Application
Water Street, Pembroke, MA
MassHousing, School Committee, and Garner Letters
Email from MassHousing dated October 12, 2021**

Dear Ms. Chilcott, Chair Casavant, and members of the Board:

This letter is in response to three submissions to the Zoning Board of Appeals: (1) the MassHousing letter dated September 21, 2021; (2) the letter from the Pembroke Public Schools, School Committee, dated August 18, 2021 and received September 14, 2021; and (3) the letter from Patrick C. Garner Company, Inc. dated September 17, 2021, hired by abutters to review environmental submissions by Applicant, and the second letter from the North and South Rivers Watershed Association submitted to the ZBA, dated September 22, 2021.

MassHousing Letter. Submitted herewith is an email from MassHousing received October 12, 2021, which includes confirmation that the MassHousing letter dated September 21, 2021 and related to a different project named Washington Woods, “does not impact the validity

of the Project Eligibility Letter for River Marsh Village (MHID#916) and it is not MassHousing's intention that any ongoing comprehensive permit proceedings be affected." Attorney Murphy's allegations made by letter dated September 23, 2021 with respect to this Board's continued jurisdiction are without merit.

School Committee Letter. As the Board may recall, there were questions raised as to whether the school bus stops could be inside the development instead of along Water Street. In response, the Applicant inquired from the school department whether such arrangement was feasible. The School Committee responded by noting that it is their understanding that the current transportation provider for school bussing does not enter private developments such as River Marsh for bus stops, and the bus stops are located on the road accessing the development.

Placing the River Marsh bus stop at the intersection with Water Street is consistent with other Pembroke housing developments. The relevant bus stop schedules for the Pembroke High School and Pembroke Community Middle School (Route 5) and for the North Pembroke Elementary School (Route 14) are enclosed at the end of this letter. The residential developments off Water Street at Old Landing Road and Packet Landing do not have internal bus stops; the bus stops are at the corner of the roads and Water Street, as is proposed for this development.

As to the other questions raised by the School Committee, River Marsh notes that the 84-passenger bus used by Pembroke is smaller than the Pembroke fire truck for which River Marsh submitted turn radiuses. Because the larger fire truck can navigate the development, so could the school bus if the Town ever changed its position to accommodate internal bus stops at private developments. There are six visitor parking spaces along the sidewalk to the proposed River Marsh school bus stop, located within one hundred yards. River Marsh has not submitted an enrollment study to the School Committee because it is not required under comprehensive permit requirements or Town of Pembroke regulations, and thus, has not been performed.

We believe this answers all open questions as to why the school bus stop is being proposed at the intersection of the north drive (Road A) and Water Street.

Environmental Questions. We hereby enclose the letters from River Marsh to the ZBA, the first dated June 8, 2021, addressing many of the items raised in Mr. Garner's letter and the second dated April 8, 2021, addressing items previously raised by the North and South Rivers Watershed Association.

As to the unsubstantiated allegations in Mr. Garner's letter that River Marsh did not accurately depict wetland areas, we remind the Board that the wetlands on site have been delineated, peer reviewed, and a Superseding Order of Resource Area Delineation has issued to confirm the location of the bordering vegetative wetland. Furthermore, our June 8th letter confirms that River Marsh, through Environmental Consulting & Restoration, LLC, did delineate the natural bank of the North River on December 20, 2017 and flagged all wetland edges. The wetland locations are shown on the Project Plans. The line of the North River Corridor that is

depicted on the Project Plans is based on the onsite delineation and is more protective than the 300-feet required by the Protective Order. There is no merit to Mr. Garner's letter.

As to the most recent letter from the North and South Rivers Watershed Association, we note that River Marsh is obligated to comply with state stormwater standards and the peer reviewer has reviewed the project in accordance with such standards. The use of native plantings and restrictions on fertilizers and herbicides will be incorporated in an Order of Conditions that will be required under the Wetland Protections Act. With respect to the requested visual rendering, we note that a rendering is not required for approval. Furthermore, a visual rendering from the river would have limited value where even the closest proposed structure in the River Marsh project is over a quarter mile away from the navigable portion of the North River.

We look forward to discussing these and other matters with the Board at our hearing on October 26, 2021.

Respectfully yours,

RIVER MARSH LLC
By its Attorneys,

WARREN BAKER

KIMBERLY KROHA

Cc: Peter Palmieri <ppalmieri@merrillinc.com>
Matthew Heins <mheins@townofpembroke.mass.org>
Amy E. Kwezell <AKwezell@k-plaw.com>
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Ron Muller <ronmuller@ronmullerassociates.com>
Brian Murphy <brianmurphy@unicornrealty.com>
Shaun Kelly <skelly@rdva.com>

PHS and PCMS Route 5 - AM

TIME	LOCATION
1 6:30 am	START BUS BARN - PLAIN ST
2 6:45 am	CARRIAGE HOUSE LN & WATER ST
3 6:45 am	52 WATER STREET
4 6:46 am	GATES LN & WATER ST & WELLINGTON DR
5 6:47 am	144 WATER STREET
6 6:51 am	330 OLD OAK ST
7 7:04 am	CROSS ST & WATER ST
8 7:05 am	333 WATER ST
9 7:05 am	PACKET LNDG & WATER ST
10 7:07 am	OLD LANDING RD & WATER ST
11 7:08 am	275 WATER ST
12 7:10 am	180 SCHOOSSETT ST
13 7:11 am	BURR AVE & LORNA AVE
14 7:11 am	BLAKE AVE & LORNA AVE
15 7:29 am	PEMBROKE COMMUNITY MIDDLE (MIDDLE)
16 7:34 am	PEMBROKE HIGH SCHOOL (HIGH)

PHS and PCMS Route 5 - PM

TIME	LOCATION
1 2:15 pm	PEMBROKE COMMUNITY MIDDLE (MIDDLE)
2 2:20 pm	PEMBROKE HIGH SCHOOL (HIGH)
3 2:34 pm	CARRIAGE HOUSE LN & WATER ST
4 2:34 pm	52 WATER STREET
5 2:35 pm	GATES LN & WATER ST & WELLINGTON DR
6 2:36 pm	144 WATER STREET
7 2:38 pm	275 WATER ST
8 2:38 pm	CROSS ST & WATER ST
9 2:39 pm	OLD LANDING RD & WATER ST
10 2:39 pm	333 WATER ST
11 2:40 pm	PACKET LNDG & WATER ST
12 2:43 pm	180 SCHOOSSETT ST
13 2:43 pm	BURR AVE & LORNA AVE
14 2:44 pm	BLAKE AVE & LORNA AVE
15 3:00 pm	BRYANTVILLE ELEMENTARY SCHOOL

North Pembroke Route 14 - AM

	TIME	LOCATION
1	8:24 AM	PEMBROKE WOODS DR group stop
2	8:28 AM	11 CROSS ST
3	8:29 AM	333 WATER ST
4	8:32 AM	OLD LANDING RD & WATER
5	8:32 AM	290 WATER ST
6	8:39 AM	NORTH PEMBROKE ELEMENTARY (NOR)

North Pembroke Route 14 - PM

	TIME	LOCATION
1	3:35 PM	NORTH PEMBROKE ELEMENTARY (NOR)
2	3:40 PM	PEMBROKE WOODS DR group stop
3	3:44 PM	11 CROSS ST
4	3:45 PM	333 WATER ST
5	3:46 PM	290 WATER ST
6	4:04 PM	BUS BARN RETURN - PLAIN ST

Kimberly Kroha

From: Jessica Malcolm <JMalcolm@masshousing.com>
Sent: Tuesday, October 12, 2021 11:01 AM
To: Kimberly Kroha; Jennifer Wierl
Cc: 'brianmurphy@unicornrealty.com'
Subject: RE: Washington Woods, Nowell - MH ID No. 348
Attachments: 2021-9_Suspension letter_WashingtonWoods.pdf

Ms. Kroha,

Per your request for clarification, the suspension of Brian Murphy due to non-compliance of the Regulatory Agreement for the above-captioned project pertains only to the requisite approval processes of the Subsidizing Agency (namely Site and Final Approval). This suspension does not impact the validity of the Project Eligibility Letter for River Marsh Village (MHID#916) and it is not MassHousing's intention that any ongoing comprehensive permit proceedings be affected.

Please let me know if you have any further questions.

Thank you,

Jessica Malcolm



Jessica L. Malcolm
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**BB Baker, Braverman
& Barbadoro, P.C.**

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*ALSO ADMITTED IN NJ
**ALSO ADMITTED IN NY & CA
***ALSO ADMITTED IN FL

June 8, 2021

*Via E-Mail: schilcott@townofpembrokemass.org
and First Class Mail*

Frederick Casavant IV, Chairman
c/o Sabrina Chilcott
Pembroke Zoning Board of Appeals
100 Center Street
Pembroke, MA 02359

**Re: River Marsh – Comprehensive Permit Application
Water Street, Pembroke, MA
North River Corridor**

Dear Ms. Chilcott, Chair Casavant, and Members of the Board:

Reference is made to the letter from Scott W. Horsley that we received May 18, 2021, and the letter Dennis A. Murphy, Esq. that we received June 7, 2021, with respect to delineation of the North River Corridor.

The North River Corridor is properly delineated on the project plans in accordance with the language of the Scenic and Recreational River Protective Order for the North River (the "Protective Order"). The 300-foot North River Corridor, over which the North River Commission has jurisdiction under the Protective Order was established in 1978 according to the North River Corridor map and Protective Order recorded in the Plymouth County registry in 1979. Although wetland flagging and on-the-ground conditions apply to setbacks and analysis inside the Corridor, they do not extend the 300 feet beyond what was set in 1978. Furthermore, River Marsh did flag the freshwater marsh on which the definition of natural bank is defined, and River Marsh included an even larger corridor of protection than required by the North River Corridor map. The argument made by Mr. Horsley and Attorney Murphy conflicts with the language of the Protective Order. The bordering

vegetative wetland on the site must be protected under the Wetland Protection Act and associated regulations, but it does not extend the North River Corridor beyond what is delineated on the River Marsh project plans. The River Marsh project plans comply with state law under the Protective Order and the Wetland Protection Act.

The Protective Order requires determination of the natural bank for work inside the 300-foot corridor, but it does not require flagging to determine the extent of the Corridor. The Protective Order specifically defines the Corridor as "the river, marsh and land up to 300 horizontal feet from the natural bank of the river as delineated on the plan entitled "Commonwealth of Massachusetts, Department of Environmental Management, Scenic and Recreational River Corridor, North River" (emphasis added). See Section 1 and subsection (F). The Corridor was delineated in 1978, and there is no expiration period for that delineation. The Corridor is set by the plans entitled, "Scenic River Corridor, North River" and recorded in the Plymouth County Registry of Deeds at Book 20, Page 869 (the "North River Corridor map"). A hearing was held on the delineation, and the areas were approved March 22, 1979. The Protective Order was akin to a taking, and the list of assessed owners of land so affected were recorded with the Protective Order in the Plymouth Registry at Book 4639, Page 278. The Corridor over which the North River Commission has jurisdiction is a definite and certain line set forth in the Protective Order and shown on the recorded plans. The definition of "natural bank" is used to determine setbacks within the 300 feet Corridor, but the definition of "natural bank" does not extend the land over which the North River Commission has jurisdiction. The jurisdiction of the North River Commission stops at the 300 feet delineated on the North River Corridor map and affecting the 300 feet or less of property owned by owners identified in the Protective Order recorded on April 11, 1979.

Although River Marsh could have delineated the 300-foot North River Corridor based only on the 1978 North River Corridor map, River Marsh took great care to ensure they were also furthering the purposes of the Protective Order by delineating the natural bank of the North River through flagging the freshwater marsh on the ground. Based on that flagging, River Marsh moved the project even farther away from the North River than the 300 feet established in 1978 that was set in the Protective Order. The natural bank was delineated by Environmental Consulting & Restoration, LLC on December 20, 2017. This notation has been on plans, but the most recent plan set, last revised June 7, 2021, was submitted yesterday (the "Project Plans"). As noted on the enclosed memorandum from Brad Holmes, Manager of Environmental Consulting & Restoration, LLC, dated December 30, 2017, the delineation shown on the Project Plans is more conservative than the line shown on the 1978 North River Corridor map, and thus the project is further away from the river than would have been required by the Protective Order.

Although it does not apply to River Marsh because the entire project is outside of the 300-foot Corridor, the definition of "natural bank" is discussed in the enclosed memorandum from Brad Holmes. The definition set forth by Mr. Horsley and Attorney Hill does not apply. The Protective Order does define natural bank according to the marsh, and Mr. Holmes placed the delineation used on the Project Plans based on the marsh. The marsh is not equivalent to the bordering vegetated wetland. Furthermore, the Wetland Protection Regulations, 310 C.M.R. 10.00 et seq., govern riverfront areas but expressly exclude the North River Corridor. Specifically, Section 10.58(6) lists the areas exempted from Riverfront Area jurisdiction and subsection (j) states as an exemption "Activities within riverfront areas subject to a protective order under M.G.L. c. 21, § 17B, the Scenic

Rivers Act.” In any event, the definition of natural bank in the Protective Order only applies to setback determinations inside the Corridor, it does not extend the Corridor over which the North River Commission has jurisdiction.

The Protective Order was adopted under Ch. 367, § 62 of the Acts of 1978 and under the statute repealed in 2003 that was at G.L. c. 21, § 17B. Although G.L. c. 21, § 17B, was intended to cover other rivers in the state, the North River is the only river for which such a protective order was issued before the statute was repealed. The Protective Order is a matter of state law, and of course River Marsh is not requesting a waiver of any portion of the Protective Order, nor would the Board have any jurisdiction to grant such waivers if requested. See Jepson v. Zoning Bd. of Appeals of Ipswich, 450 Mass. 81, 85 n.9 (2007).

As a point of further correction, Attorney Murphy’s letter references the Superseding Order of Resource Area Delineation issued February 22, 2018, claiming it expired. As you may recall, the Extension Order was issued February 17, 2021, and it extends the Superseding Order to February 22, 2024. We provided the Board with the Extension Order on February 22, 2021. Furthermore, the Superseding Order was extended along with other permits under the COVID-19 State of Emergency and would not be expired even if we had not received the extension.

Respectfully yours,

RIVER MARSH LLC
By its Attorney,

WARRENE BAKER

WFB:amg
enclosure

Cc: Amy Kwesell, Esq.



Environmental Consulting & Restoration, LLC



NATURAL BANK DELINEATION MEMO

TO: McKenzie Engineering Group, Inc.

FROM: Brad Holmes @ ECR, LLC

DATE: December 30, 2017

RE: Water Street, Pembroke

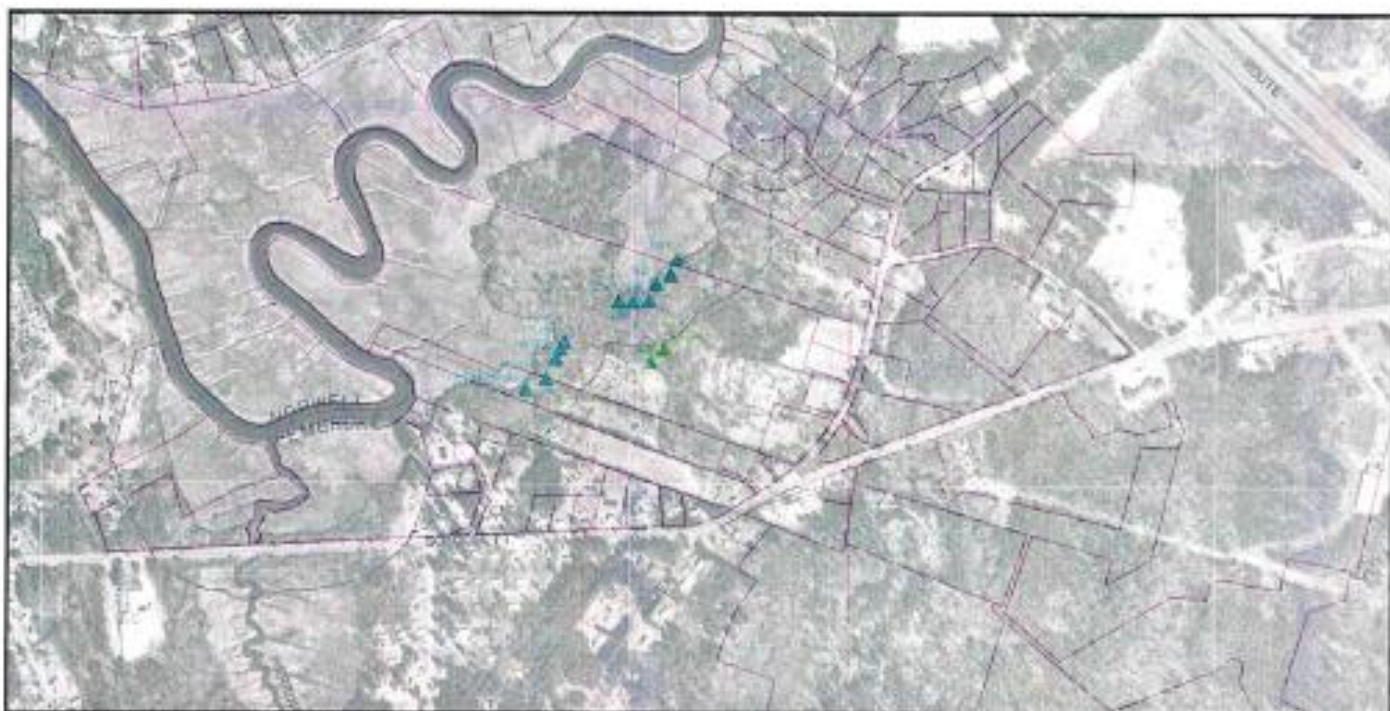
Environmental Consulting & Restoration, LLC (ECR) delineated the limit of the freshwater marsh leading to the salt marsh associated with the North River at the property on and near Lots 17 & 17A Water Street in Pembroke (the Site) on December 20, 2017. The purpose of ECR's field delineation was to delineate the landward limit of the Natural Bank of the North River in accordance with the requirements of the North River Protective Order so that the 300 foot North River Corridor could be established on and near the site. Due to the swampish conditions within the freshwater marsh preventing access to the edge of salt tolerant vegetation located further into the marsh system, ECR hung blue ribbons at the limit of the freshwater marsh located downgradient of the Bordering Vegetated Wetland system. These flags represent a very conservative delineation of the Natural Bank of the North River, which is defined in the Protective Order as follows:

Natural Bank shall mean:

- a) In wetland areas, it means the landward edge of the salt or freshwater marsh, as defined in G.L. c. 131, s. 40;
- b) In tidal rivers or streams, it means the landward edge of the mean annual high tide. Where emergent wetland vegetation is present, this boundary shall be identified as the landward edge of specific vegetative species which require periodic flushing and input of salt, brackish or fresh water to survive;
- c) Where there is a natural or man-made structure containing the river or stream, it means the aquatic side of the structure which contains the river or stream at the mean annual high tide. Where there are beaches, rock shores or mud Banks, the natural bank shall be the point at which the Water's edge meets the land during the mean annual high tide; d) In freshwater rivers, it means the landward edge of the mean annual high water which usually occurs in the early spring. Where emergent wetland vegetation is present, this boundary shall be as defined in G.L. c. 131 s. 40.

ECR also GPS surveyed each Natural Bank flag placed in the field and has overlaid these flags onto the 1978 North River Corridor map. As you can see on the following overlay map, ECR's Natural Bank flags are landward of the Natural Bank of the river line, which again allows for a very conservative approach to delineating the Natural Bank of the North River at the site. As a result of ECR's delineation, the proposed project at the site is landward of the 300 foot North River Corridor and outside the jurisdiction of the North River Commission. Upon review of this delineation memo, please contact me at (617) 529 – 3792 or brad@ecrholmes.com with any questions or requests for additional information.

Thank you,
Brad Holmes, Professional Wetland Scientist #1464
Manager



Natural Bank Historical Overlay Plan

*Off Water Street
Pembroke, Massachusetts*

December 22, 2017



BB Baker, Braverman & Barbadoro, P.C.

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April 8, 2021

*Via E-Mail: schilcott@townofpembroke.mass.org
And First Class Mail*

Frederick Casavant IV, Chairman
c/o Sabrina Chilcott
Pembroke Zoning Board of Appeals
100 Center Street
Pembroke, MA 02359

**Re: River Marsh – Comprehensive Permit Application
North and South Rivers Watershed Association Inc.
Water Street, Pembroke, MA**

Dear Ms. Chilcott, Chair Casavant, and members of the Board:

This letter is in response to comments by the North and South Rivers Watershed Association (the "Association") in their letter dated March 15, 2021. We appreciate the Association taking the time to review our project. We look forward to working together to preserve the North River and are excited to welcome future residents of this project to enjoy its scenic beauty.

Since the last hearing on March 9, 2021, the Applicant's team has closely studied the plans to incorporate questions raised at the hearing and through the Town's third-party peer reviewer, Merrill Engineers. The Applicant performed soil testing and modeling since that hearing, as requested. The project has also been moved completely outside of the 300-foot boundary of the North River Protective Order. Although the walking trail and maintenance path that had previously been proposed within 300 feet from the North River would be allowed under Section 5 of the Protective Order, the Applicant understood from Association and community comments that it was important to keep the entire project outside of 300 feet. Accordingly, there is no

portion of the redesigned project that falls within the 300-foot corridor that was created to preserve this important resource.

We have included below the comments and questions by the Association to which this letter responds. We have included our response in **bold**.

Comments from the Association:

Proposed Stormwater Management System Comments

The proposal includes a conventional drainage system — dense development with closed drainage system that discharges to a single infiltration basin in the rear of the site adjacent to the river. There is no attempt to employ low impact development/green infrastructure techniques to the project, which would decentralize the stormwater system and allow the development to reflect the natural hydrologic conditions as required by the MassDEP Stormwater Management Standards. There are significant opportunities to incorporate LID including reducing the impervious footprint, disconnection of roof drains, decentralizing the closed drainage system, and incorporating bioretention and porous pavement into the project.

From the Natural Resources Conservation Service soil mapping, the on-site soils appear to be favorable for infiltration throughout the upland areas of the site. Integration of these additional systems will reduce the size of the basin that is in the lowest portion of the site and encroaches upon the resource areas.

Response. The drainage system has been designed to comply with Massachusetts DEP Stormwater Management Regulations to protect the surrounding environment. Additional low impact techniques are not required nor economically appropriate for this housing development that incorporates 25% affordable units.

On-site soil testing should be performed to confirm soil texture and estimated seasonal high groundwater elevation. The engineer is currently utilizing test pit data that is over 20 years old. The design documentation should be updated to confirm that the proposed design will meet the offset requirement for the infiltration basin and clarify the infiltration rate.

Response. Additional soil testing was performed on March 16, 2021 at the specific location of the infiltration basin.

The Applicant should confirm that they are using Atlas 14 rainfall data for the drainage analysis. SCS rainfall data is historical and does not allow the stormwater system to be sized based on current precipitation patterns.

Response. The project complies with all current MassDEP Stormwater Regulations, even though it is exempt from Standard 2 for land subject to coastal storm flowage as defined in 310 CMR 10.04.

The Stormwater Report is missing the following information as required under the MassDEP Stormwater Management Standards:

- o Water quality calculations
- o Groundwater recharge calculations
- o Mounding calculations (if less than 4 foot offset to GW)
- o Closed drainage calculations
- o MassDEP Stormwater Checklist
- o LTPPP and O&M Plan
- o Illicit Discharge Statement

Response. The Applicant has prepared and submitted updated reports based on the March 16, 2021 soil testing, entitled Drainage Calculations and Stormwater Management Plan, Comprehensive Permit Plan, River Marsh Village, Pembroke, MA, prepared by McKenzie Engineering Group, dated November 27, 2018, last revised April 5, 2021. The Applicant's project complies with the MassDEP Stormwater Management Standards.

Wetland/Scenic Resource Areas

The following outlines specific concerns regarding potential impacts to wetlands and scenic resource areas:

Project is partially located within North River Scenic Corridor. This includes the proposed infiltration basin and part of the recreational trail. We ask for this to be removed from the Scenic Corridor to maintain the public's scenic views from the river. And that there be an analysis of how this project will look from the point of view of public using the river. All attempts should be made to reduce impacts to the scenic vista from the North River for the public.

Response. As noted in the introduction, the project has been removed completely from the Scenic Corridor as requested.

Wetland resources include a Certified Vernal Pool abutting the site. The project may impact hydrology towards vernal pool/upper wetland. This should be analyzed by the Applicant to confirm the project will not negatively impact the vernal pool.

Response. The vernal pool is located entirely within a bordering vegetated wetland and shielded by the surrounding protected area within the BVW. The project will not impair any wildlife habitat function that may be present in this vernal pool.

In 2017, when the project was first proposed, an examination using Massachusetts GIS online mapping of natural resources showed that the majority of property, including the proposed development, was within mapped Natural Heritage and Endangered Species Priority Habitat. Since that time, the NHESP program removed this area, not because there was a study done to

investigate whether the endangered species was still using this site, but because there had not been any documentation of that species on this site for over 25 years. We request that the site be assessed for the species to see if it no longer uses the site.

Response. This property is not listed as a Natural Heritage and Endangered Species Priority Habitat, so the Applicant is not required to perform the requested study.

NSRWA

The Applicant should confirm if the Project requires submittal for MEPA review. It appears that the proposed impervious areas, including pavement, gravel roads with compacted subbase, and roofs, will approximate five (5) acres which is a MEPA threshold.

Response. The Project does not meet a MEPA threshold that would trigger review.

The Applicant is filling in wetlands to access upland for wastewater disposal. The Applicant should examine if there is an alternative to filling in wetlands and provide an alternatives analysis that does not involve filling in wetlands.

Additional detail is needed for wetland crossing to determine the impacts to the jurisdictional resource areas. This includes a larger scale plan of the crossing to clarify the crossing type, associated grading and retaining wall construction, erosion and sediment controls, limit of work, and intended construction sequencing.

Response. The Applicant includes a 2:1 replication area in exchange for the wetland crossing that is proposed. The Applicant has reviewed alternatives for construction. Impacts are minimized by a crushed stone road and open bottom culvert to maintain water and wildlife movement important to these resource areas at the crossing. After resolution of the Comprehensive Permit, final plans will be created with precise details on the crossing and replication area for Applicant's Notice of Intent that will be filed with the Pembroke Conservation Commission.

We look forward to discussing these and other matters with the Board during the hearing scheduled for April 13, 2021.

Respectfully yours,
RIVER MARSH LLC
By its Attorney,

WARREN F. BAKER

WFB:amg

Cc: Amy Kwesell, Esq.