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March 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
Water Street, Pembroke, MA**

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

This letter is in response to comments pertaining to legal issues in the peer review letter from Peter Palmieri of Merrill Engineers and Land Surveyors dated March 1, 2021. McKenzie Engineering Group will provide a more comprehensive response to the questions and comments in Mr. Palmieri's letter at our hearing on March 9, 2021.

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

3.01(a) *Site Control*. Mr. Palmieri recommends that site control documents be updated or documentation provided that the information in the Application is still valid.

Response. On January 25, 2021, the Applicant provided the Board with copies of the First Amendments to each Purchase & Sale Agreement, which extended the permit condition date to January 1, 2024.

3.01(c). *Existing Conditions.* Mr. Palmieri requests additional updated soil testing be performed besides the 1992 soil testing included in the Applicant's plans.

Response. It is unlikely that there has been any change to soils since testing was performed in 1992. Additional soil logs are appropriate before a building permit is issued, but not at the application stage. The Applicant's submission meets all preliminary design requirements applicable to this stage.

3.01(g). *Preliminary utilities plan.* Mr. Palmieri recommends that additional design information be provided to demonstrate that the size of the subsurface sewage disposal system has been adequately designed to meet the state and local regulations. This additional information should include soil testing results and a mounding analysis. Mr. Palmieri confirms that a stormwater management report entitled "Drainage Calculations and Stormwater Management Plan" has been submitted and indicates that the overall stormwater management system will attenuate the post development stormwater flows to a level not exceeding the existing conditions, but he recommends that the Applicant provide the MassDEP "Checklist for Stormwater Report." As to Standard 8, Mr. Palmieri also recommends that a detailed construction sequencing be provided and that the location of the construction entrance, stockpile areas and temporary sedimentation basins be included. Calculations should be submitted for sizing of the basins and details of the sedimentation basins be provided including the proposed grading as well as the type of outlet control structures. An EPA Notice of Intent and Stormwater Pollution Prevention Plan (SWPPP) will be required since the project proposes more than 1 acre of disturbance. If this project is approved and if acceptable to the Board of Appeals the submittal of this additional information could be made a Condition of Approval.

Response. The comment expresses concerns over the suitability of the wastewater system and proposes soil testing, mounding analysis, and review of sewage disposal plans. These tests and reviews are appropriate before a building permit is issued, but not at the application stage. The Applicant's submission meets all preliminary design requirements applicable to this stage, which are enumerated in 760 CMR 56.05. Subsection (f) applies to utilities and requires only "a preliminary utilities plan showing the proposed location and types of sewage, drainage and water facilities, including hydrants."

The Applicant will provide details on the construction of the system with final construction plans to be submitted to the Board of Health under state law standards. The Applicant will provide details on its stormwater system in its post-permit filing to Conservation Commission, and the Applicant must comply with the DEP Stormwater Standards as a matter of state law and there is therefore no local

concern with respect to those state standards. The regulations require only preliminary plans, and a developer is not required to produce full design work before a Comprehensive Permit is issued so long as it demonstrates through a "minimum of evidence" that it project will meet any applicable requirements that have not been waived.

The foregoing notwithstanding, the Applicant has attempted in good faith to address concerns raised by Mr. Palmieri that are above and beyond the requirements of 760 C.M.R. 56.05, to the extent feasible.

3.01(h). *Project Eligibility Letter*. Mr. Palmieri references the Applicant's project eligibility letter dated February 15, 2018.

Response. To the extent there is a question relating to the viability of the Project Eligibility Letter, we point to the language of the letter itself, which states that "approval will be effective for a period of two (2) years from the date of this letter. Should the Applicant not apply for a Comprehensive Permit within this period or should MassHousing not extend the effective period of this letter in writing, this letter shall be considered to have expired and no longer be in effect." The Applicant acted timely by filing its Comprehensive Permit application on November 27, 2018. We also note that 760 CMR 56.04(6) states that issuance of project eligibility is "conclusive evidence that the Project and the Applicant have satisfied the project eligibility requirements of 760 CMR 56.04(1).

3.01(i). *Waivers*.

Response. Attorney Kwesell requested at the hearing on January 12, 2021 that the Applicant respond to the peer review report with an updated list of waivers. The Applicant intends to provide any updated waivers after incorporating several of Mr. Palmieri's comments into its plans.

We look forward to discussing these and other matters with the Board during the hearing scheduled for March 9, 2021.

Respectfully yours,

RIVER MARSH LLC
By its Attorney,

WARREN R. BAKER

WFB:amg