



March 11, 2021

Christian Klein, Chairman
Zoning Board of Appeals

Town of Arlington
50 Pleasant Street
Arlington, MA 02476

**Re: 1165R Massachusetts Avenue - Arlington, MA
Wetlands / Resource Area Regulatory Peer Review**

Dear Chairman Klein:

BETA Group, Inc. (BETA) has completed its initial Wetlands / Resource Area Regulatory peer review of the proposed Chapter 40B residential development located at 1165R Massachusetts Avenue in Arlington, Massachusetts. Our analysis of the environmental related elements of the site plans and supporting documents for the above-referenced project are based on selected materials from the following available documents:

- Pertinent Documents/Sections of the Chapter 40B submission to the Arlington ZBA, including:
 - Section 3.2.6 – Report on Existing Condition
 - Section 3.2.10 – Recreation and Open Space Amenities
 - Section 3.2.11 – List of Requested Waivers
 - Section 3.2.13 – Impact Analysis of the Natural and Built Environment
 - Section 3.2.16 – Compliance with Master Plan
- Preliminary Site Development Plans (6 Sheets) including:
 - *ALTA/NSPS Land Title Survey, 1165R Massachusetts Avenue, Map 57, Block 2, Lot 10B and Part of Lot 15, Town of Arlington* stamped plan set, 4 sheets, July 16, 2020, prepared by Control Point Associates, Inc.;
 - *Proposed Site Plan Documents – Proposed Residential Development* plan set (2 Sheets – C-301 and C-401, Site Layout and Grading and Drainage), June 15, 2020, prepared by Bohler Engineering (Development Plans);
- *Proposed Site Plan Documents – Proposed Residential Development* plan (C-501 – Utility Plan), July 15, 2020, prepared by Bohler Engineering;
- *Proposed Site Plan Documents – Proposed Residential Development* plan (PH1-2 and PH3-4 – Phasing Plans), August 21, 2020, prepared by Bohler Engineering;
- *Proposed Site Plan Documents – Proposed Residential Development* plan (EC-2 – Pre-1946 Mill Complex Footprint Exhibit), September 21, 2020, prepared by Bohler Engineering;
- Architectural Drawings (16 Sheets), June 16, 2020 prepared by Bargmann Hendrie + Archetype, Inc. (bh+a) of Boston, MA
- *1165R Mass Ave, Arlington, MA, Project Eligibility / Site Approval*, prepared by MassHousing, November 17, 2020;

- Comment letter, 1165R Massachusetts Avenue, Arlington, MA, prepared by Arlington Select Board, August 31, 2020;
- Request for Determination of Applicability, 1165-1167 Mass Ave. & 0 Ryder Street, Arlington, MA, August 10, 2020, prepared by Goddard Consulting, LLC.
- Historic Mill Legal Support Letter, “1165R Massachusetts Avenue, Arlington, MA”, September 2, 2020 prepared by Krattenmaker O’Connor & Ingber P.C.
- Town Counsel Guidance, “Rivers Protection Act ‘Historic Mill Complexes’ Exemption Standard”, September 3, 2020, prepared by Douglas W Heim.
- Determination of Applicability, prepared by the Arlington Conservation Commission, undated copy.
- FEMA Flood Insurance Study, Middlesex County, Revised June 6, 2016;
- Town of Arlington Zoning Bylaw with amendments through April 2016;
- Town of Arlington Wetland Protection Bylaw, Article 8 and Regulations for Wetland Protection, June 4, 2015;
- Massachusetts GIS mapping tool OLIVER (http://maps.massgis.state.ma.us/map_ol/oliver.php), website visited February 4, 2021;
- USFWS Information for Planning and Consultation (IPaC), online tool (<https://ecos.fws.gov/ipac/>), website visited February 15, 2020.

General

BETA’s comments presented here relate to existing site conditions and the current conceptual project plans and figures available with respect to how the project complies with the Massachusetts Wetlands Protection Act Regulations, 310 CMR 10.00, and the Town of Arlington Wetland Protection Bylaw Article 8 and Regulations for Wetland Protection (the Bylaw). BETA’s Civil / Stormwater peer review comments will be provided in a stand-alone letter report to be issued once the stormwater analysis and accompanying design plans are submitted to the ZBA.

Proposed Project

The proposed Project includes construction of 130 residential units in four (4) apartment buildings, along with associated access driveways, parking areas (total of 11 surface spaces) and garages, utilities, infrastructure, a Riverwalk, and stormwater management system improvements (the Project). The Project also proposes a new vehicular bridge over Mill Brook and proposes to re-route Ryder Brook. A Comprehensive Permit Application was filed with the Arlington ZBA under the M.G.L Chapter 40B provisions in June 2020.

Vehicular traffic into the Project Site will be from Massachusetts Avenue only, while vehicles exiting the Project Site can leave via Massachusetts Avenue or Ryder Street. The driveway connecting the Project Site to Ryder Street will only allow for one-way traffic.

Existing Conditions

The proposed Chapter 40B Residential Development is located at 1165R Massachusetts Avenue and includes two parcels that total approximately 2.3-acres of land, located between Ryder Street, Massachusetts Avenue, Quinn Road, and the historic Boston and Main Railroad (now the Minuteman Commuter Bikeway) in Arlington, Massachusetts (the Project Site). The Project Site is generally within an industrial/commercial area in Arlington and is bounded to the north, east, and South by Mirak Automotive Dealers and an Automotive Detailing business; and to the east by Construction/Contractor facilities and a condominium. Both Ryder Street and Forest Street (located to the west of the Project) are primarily residential neighborhoods.

The Project Site was originally developed in the 1800s as a mill and is almost entirely degraded. It is improved by former mill buildings, parking areas, and a single-lane vehicular bridge over Mill Brook. The onsite buildings are interconnected via breezeways and have undergone additions since the original development of the property. The primary structures consist of a 4-story brick building located northeast of Mill Brook (with single-story additions to the east and south) and a 3-story frame building located southwest of Mill Brook, which is connected to the 4-story building over Mill Brook by a breezeway.

A recreational field, rail trail, and small area of open green space exist to the east of the Project Site. These areas are the primary open space within approximately a quarter of a mile. An intermittent stream (Ryder Brook) flows southwest through the center of the Project Site to a 24" culvert that discharges to Mill Brook. Mill Brook is a perennial stream (river), which flows southerly through the Project Site and is bordered on both sides by a vertical retaining wall. Ryder Brook is a regulated resource area under the local Bylaw only.

Surface topography west of Mill Brook generally slopes steeply southeasterly toward the river. East of Mill Brook, the topography is relatively flat, but slopes south/southwest to Ryder Brook and Mill Brook. Although the Project Site is situated within a heavily developed area, Mill Brook, Ryder Brook, and the off-site Minuteman Rail Trail have been noted as locally important corridors for wildlife movement through the Town of Arlington.

The Project Site contains several resource areas Subject to Protection under the Act, its Regulations, and the Bylaw:

- Bank to Mill Brook (Perennial Stream),
- Bank to Ryder Brook (Intermittent Stream – Jurisdictional under the Bylaw only),
- Land Under Mill Brook,
- Land Under Ryder Brook (Bylaw only),
- Bordering Land Subject to Flooding associated with Mill Brook,
- 200-foot Riverfront Area to Mill Brook,
- 100-foot Adjacent Upland Resource Areas (AURA) associated with Mill Brook and Ryder Brook (Bylaw only) and,
- 100-foot Buffer Zone to on-site Areas Subject to Protection under the Act and Bylaw.

In 2020, through a Request for Determination of Applicability process, the Arlington Conservation Commission (ACC) determined that Ryder Brook does not meet the definition of "Stream", per 310 CMR 10.04, because there are no upgradient resource areas. However, Ryder Brook does meet the definition of an Area Subject to Protection under the local Bylaw. The ACC has also concurred that the majority of the Project Site meets the definition of an Historic Mill Complex, as defined in 310 CMR 10.58(4) and (5). See attached Determination of Applicability and Plan Figure EC-2 *Pre-1946 Mill Complex Footprint Exhibit* dated 09/21/2020 prepared by Bohler.

A review of the current FEMA Flood Insurance Study for Middlesex County and the existing conditions topography presented on current Project plans indicate that the 100-year floodplain Base Flood Elevation associated with Mill Brook changes significantly, dropping from Elevation 103 feet north of Ryder Street to Elevation 90 feet at the southern limit of the Project. Based on the elevations of the top of the retaining walls that contain Mill Brook, the 100-year FEMA flood is contained within those walls. The existing northern driveway, however, is located within the 500-year flood plain Zone X. FEMA Floodway is also mapped along Mill Brook.

Regulatory Compliance – Project Review

The Project will require an Order of Conditions from the Arlington Conservation Commission for work in areas Subject to Protection and Jurisdiction pursuant to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40 (the Act) and its Regulations (310 CMR 10.00). Based on the Comprehensive Permit Application, the Project is in the preliminary development stage and details describing the impacts on the interests identified in the Bylaw and its Regulations are not defined at this time. Specific details, such as quantification of impacts to Areas Subject to Protection and Jurisdiction as well as, locations of temporary construction impact, including staging areas, erosion controls, restoration efforts, and dewatering (if required), will need to be provided to adequately evaluate how the Project activities will affect areas protected under the Act and the Bylaw.

Based on BETA's review of the available Project plans, documents, and publicly available information, we respectfully provide the following comments and recommendations.

1. Plan Sheet EC-1, "Existing Conditions Plan" dated August 7, 2020, of the RDA filing and Sheet 1 of the Existing Conditions Plan Set (Record Survey) shows the current Bank delineations for both Ryder Brook and Mill Brook. As determined by a Negative Determination of Applicability issued by the ACC, Ryder Brook is not Subject to Protection under the Act, however, it is protected by the Bylaw¹. BETA reviewed and concurred with the Bank (to perennial stream) boundary shown on the plans flagged as Series RB1 to RB10 and RB101 to RB112 (for Mill Brook) under the Act and the Bylaw, as well as the Bank (to intermittent stream) boundary shown on the plans flagged as Series SB1 to SB6 and SB101 to SB106 (for Ryder Brook) under the Bylaw.
2. In accordance with 310 CMR 10.58(6)(k), the ACC determined that portions of the Project Site qualify as a Historic Mill Complex as depicted on Sheet EC-2 - *Pre-1946 Mill Complex Footprint Exhibit* of the *Proposed Site Plan Documents – Proposed Residential Development* plan set and are therefore exempt from the Massachusetts Rivers Protection Act and the Riverfront Area General Performance Standards under 310 CMR 10.58(4) and (5).
3. Plan Sheet EC-2, "Pre-1946 Mill Complex Footprint Exhibit," dated September 21, 2020 depicts two distinct areas within the Project Site that do not qualify for the Historic Mill Exemption under the Rivers Protection Act and are within the 200-foot Riverfront Area (RA) associated with Mill Brook. These areas are:
 - a. The portion of the Project within the Ryder Street right-of-way (ROW) from the Forest Street intersection to the Site driveway and,
 - b. A 24,355± SF portion land in the northeast corner of Site, extending southeast from the property boundary to the southern Bank of Ryder Book and approximately 150 feet southwest from the property boundary.

¹ In accordance with Section 2 of the Town of Arlington Wetland Protection Bylaw, Streams are protected. Section 4 (71) of the Arlington Protection Bylaw Regulations defines a Stream as "A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to hydraulic gradient, and includes streamlets and rivulets. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is a stream."

Impacts to the portions of the Site that are not within the Historic Mill Complex footprint must comply with the Performance Standards at 310 CMR 10.58(4) and (5), as applicable. Specifically,

- a. The proposed activities within the Ryder Street right-of-way are entirely within previously developed/degraded Riverfront Area, as defined under 310 CMR 10.58(5). To meet the RA performance standards at 310 CMR 10.58(5), work in this area must improve existing conditions, must not be closer to the river than existing conditions and cannot result in an increase in degraded RA.
- b. Although the majority of the property in the northeast corner of the Site is a parking lot and qualifies as degraded under 310 CMR 10.58(5), Ryder Brook and its immediate vicinity is vegetated. Work within this 24,355± SF area cannot increase the amount of degraded area; however, this work can be permitted if RA restoration is provided in accordance with 310 CMR 10.58(5)(f).

Recommendation: The Applicant should provide the ZBA with an evaluation of the Project's compliance with the Riverfront Area performance standards for the portions of the Site that do not qualify as Degraded RA that addresses the restoration requirements for impacts to non-degraded Riverfront Area under 310 CMR 10.58(5)(f & g). BETA suggests increasing native vegetation density near Mill Brook to provide shading and wildlife habitat. The planting locations and species selected for this area should consider the light available for growth of the species and the proximity of the root zone to the Mill Brook retaining walls, to protect the stability of the retaining walls.

4. Work associated with construction of the bridge over Mill Brook may require fill below the 100-year / Base Flood Elevation. Section 23 of the Bylaw requires flood storage compensation ratio of 2:1^{2,3}.

Recommendation: The Applicant should provide preliminary bridge elevation plans that depict the proposed bridge structure in relation to the floodplain elevation to confirm the Project will not result in fill of the 100-year floodplain.

5. The Mill Brook channel has a mapped FEMA Floodway. The Project proposes construction of a bridge over the designated Floodway. If work associated with the bridge construction requires placement of any structures or hanging utilities below the Floodway elevation, consultation with FEMA will be required to confirm a No-Rise Condition.
6. The Site Layout, Grading and Drainage, and Landscape Plans show impacts to the Banks and Land Under Water associated with Ryder Brook, and the AURA associated with both Ryder Brook and Mill Brook. The current Plans do not provide the extent of impacts to the Banks or Land Under Water. Intermittent and perennial streams are significant to the interests of the Bylaw.

² In accordance with Section 23, C of the Town Bylaw, "No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, or removing, filling, dredging or altering of, land subject to flooding shall be conducted without written permission of the Conservation Commission." And

³ Section 23, D states the Commission may permit activity on land subject to flooding shall provide compensatory flood storage for all flood storage volume that will be lost at each elevation...at a 2:1 ratio minimum, for each unit volume of flood storage lost at each elevation.

Section 20(C) of the Bylaw prohibits activities that will alter, fill or remove Bank, other than maintenance of an existing structure or Resource Enhancement activities. The Bylaw provides additional protection within the AURA zones associated with all streams (Section 25). Ryder Brook's Banks are currently vegetated with Japanese knotweed (*Fallopia japonica*); however, the Banks provide cover for wildlife movement between the rail trail, adjacent open space, and Mill Brook.

Recommendation: Quantify impacts to Bank and Land Under Water and consider providing a naturalized open stream channel for Ryder Brook in its proposed location through the Project Site. Per the Bylaw, this work could be considered "Resource Enhancement", as long as the constructed Banks and adjacent upland (as available) are densely vegetated with native vegetation that provides escape cover, nesting opportunities, food sources to native wildlife, and possibly pollinator habitat. The streambed material should be specified for the purposes of potential habitat for local wildlife, as well as flow velocity. This Resource Enhancement feature may eliminate the need for a Waiver from the Bylaw for this Project design element.

7. Work proposed within vegetated areas of the 25-foot No Disturbance Zone includes relocation and potential restoration / enhancement of Ryder Brook, construction of Building 4, a new vehicular bridge over Mill Brook, a Riverwalk, planting beds, and lawn areas. Construction details and information describing impacts to the AURA zones have not been provided

Recommendation: The Bylaw provides additional levels of protection to areas adjacent to resources that are not provided in the Act. The Applicant has not yet provided sufficient information for the ZBA to make an informed decision to grant Bylaw Waivers.

8. The AURA, a protected Bylaw resource area, is measured 100 feet horizontally lateral from the boundary of areas Subject to Protection under the Act and Bylaw. AURA is significant to the interest of the Bylaw,⁴ and is found to provide several functions and values significant to Bylaw including wildlife habitat. Section 25 of the Bylaw defines two levels of protection within the AURA, a No Disturbance Zone measured 25-feet horizontally from the resource area and a Restricted Zone measured 75-feet horizontally from the No Disturbed Zone.

Recommendation: The Bylaw applies the AURA to certain resource areas, including the Bank to intermittent and perennial streams, to ensure protection of the interests identified in Section 1 of the Bylaw⁵. Based on BETA's Site inspection, the AURA on this Site is generally degraded and has limited function. Impacts to AURA that is vegetated should be quantified and any change in impervious area within the AURA should be quantified in accordance with Section 25(F) of the Bylaw Regulations.

⁴ The Arlington Bylaw defines AURA as the area 100 feet horizontally lateral from the boundary of any of the following Resource Areas: marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, bank, stream, creek, pond, reservoir, or lake, or resource area defined in Section 2.A(1) through (4) of the Bylaw.

⁵ Section 1, B of the Bylaw states "areas subject to protection under the Bylaw are to be regulated in order to ensure the protection of the following interests: public or private water supply, ground water supply, flood control, erosion control and sedimentation control, storm damage prevention, other water damage prevention, prevention of pollution, protection of surrounding land and other homes or buildings, wildlife protection, plant or wildlife habitat, aquatic species and their habitats, and the natural character or recreational values of the wetland resources (collectively, "Resource Area Values" or "Interests of the Bylaw")."

9. Vegetation removal within Areas Subject to Protection and Jurisdiction under the Act and Bylaw, including Bank, AURA, RA, and Buffer Zone, will occur because of the Project. These resource areas are presumed to be significant to the interests of the Bylaw⁶. The Plan provides general site landscaping but does not include information on vegetation removal or replacement within protected areas.

Recommendation: The Applicant should provide the specific criteria for removing vegetation and replacement strategies outlined in Section 24 - Vegetation, B through H of the Bylaw. The proposed plans appear to provide greater area for planting than existing conditions, so the Project may be able to meet, or come close to meeting, the specific Bylaw performance standards.

10. BETA notes that the existing trees on the site growing out of the Mill Brook retaining wall may need to be removed to prevent future damage to the wall. To mitigate this removal, smaller shrubs can be planted near the top of the wall and trees can be planted with adequate setbacks to the wall. Additional vegetation will provide shelter, shade, and perch habitat over the brook to replace what is lost from tree removal. Vegetative shading along the river's retaining walls will help mitigate the rise in surface water temperature from the stone retaining walls.

Recommendation: Include additional vegetation replacement with consideration to shading of Mill Brook and improvement to native wildlife habitat.

11. The Banks of Ryder Brook are minimally vegetated but may provide wildlife habitat value for urban species. Wildlife habitat is significant to the interests of the Bylaw⁷ and vegetated resource areas, including vegetated Banks, are protected by buffers of the AURA zones. Construction activities that alter vegetated resource areas are assumed to affect wildlife habitat and breeding, which is prohibited under the Bylaw⁸.

Recommendation: The Applicant could provide dense native plantings adjacent to the relocated Ryder Brook stream and throughout the Project Site near Mill Brook. Additional plantings in the landscaped areas will mitigate impacts to existing habitat features and enhance the Site's ability to provide wildlife habitat.

Requested Waivers

The Applicant has requested a waiver from ten (10) provisions in the Wetland Protection Bylaw and Regulations. The provisions for which a waiver has been requested are presented below in Table 1, along with BETA's comments on the purpose and need of each request.

⁶In accordance with Section 24 A vegetation within resource areas is significant to the protection of wildlife, wildlife habitat, and water quality.

⁷ In accordance with Section 30 – Wildlife Habitat - Activities which alter the Wildlife Habitat of any Resource Area in a manner that is likely to impact the breeding success of wildlife are prohibited.

⁸ Section 30 – Wildlife Habitat Activities which alter the Wildlife Habitat of any Resource Area in a manner that is likely to impact the breeding success of wildlife are prohibited.

Table 1 –Waiver Request Summary for Arlington’s Wetland Bylaw and Regulations

Proposed Provisions to be Waived	Comments on Waiver Request
Regulations, Section 4 – Definition of Stream	Applying only the State definition of a stream would not change the ability for the Project to be permitted, therefore this waiver is not required to permit the Project.
Regulations, Section 20C – Bank Performance Standards	As described in Comment 6 above, this waiver may not be necessary because the stream relocation could qualify as Resource Enhancement, as long as certain criteria are met.
Regulations, Section 22 – Land Under Water Bodies Performance Standards	This waiver would not be necessary if the stream relocation qualifies as a Resource Enhancement. In addition, activities that alter Land Under Water are allowed if the Commission provides written permission, even if the work is not considered Resource Enhancement.
Regulations, Section 24 – Vegetation Removal Performance Standards	The Bylaw Regulations require the ACC to provide approval of vegetation removal and in-kind replacement. Vegetation removal is proposed along the Banks of Ryder Brook and Mill Brook; however, landscaping is proposed. The Applicant has not demonstrated that the Project cannot meet this standard. See Comment 9.
Regulations, Section 25D – 25’ No Disturbance in AURA Performance Standards	Because the 25-foot area around Ryder Brook and Mill Brook is previously developed, under this section the Applicant is only required to restore the buffer to the greatest extent practicable and shall provide the same amount of vegetated area as exists now. Based on the Project plans, it appears the Project can meet this Standard to the Extent Practicable. Therefore, a waiver of this provision may not be required.
Regulations, Section 25C – Alternatives Analysis for Work in 100-foot AURA	The 100-foot AURA is previously developed, and the Project has the ability to improve the AURA. The ZBA could consider this waiver, as the Site is previously developed, and Project is located almost entirely within the AURA.
Regulations, Sections 25E &F – 50’ No Build in AURA Performance Standards	Because the 50-foot buffer around Ryder Brook and Mill Brook is almost entirely developed, under these sections, the ACC can approve new structures within the 50-foot area as long as there is no increase impervious area and resources are improved. Based on the Project plans, it appears the Project can meet the local standards. Therefore, a waiver of this provision may not be required.
Bylaw, Section 4(b) – 200-foot undisturbed vegetation in RA	The Bylaw states that the Commission “may” require a 200-foot-wide area of continuous undisturbed vegetated cover. This provision of the Bylaw is not a required performance standard. Given the existing degraded conditions within the 200-foot Riverfront Area and ACC’s comments on the Project to date, it is unlikely they would require a 200- foot undisturbed area. A waiver from this provision may not be necessary, however, it could be granted without significant impacts to the environment.

Bylaw, Section 16 and Regulations, Section 11 – Permitting and Consultant Fees	The applicant is requesting a waiver of 50% of the local filing fees. The filing fees for this project would fall under Section 11.A.4. “N3” of the Regulations (Multiple dwelling structures) and Section 16.B.5. of the Bylaw. The fees presented in these sections are not consistent. Granting this waiver would result in a decrease of local filing fees from around \$15,000 to \$7,500.
Bylaw, Sections 10 & 11 – Bond Requirements	The applicant is requesting a waiver of the bond requirements in the Bylaw. Given the proximity of the Project to the onsite resource areas, and the potential for the Project to impact Protected Resource Areas, BETA recommends retaining the right to require a performance bond, primarily related to the stream relocation portion of the Project.

Conclusions

The Project will require issuance of an Order of Conditions by the ACC under the Massachusetts Wetlands Protection Act and its Regulations. Because the Project has been filed under the M.G.L. Chapter 40B provisions, the ZBA administers the local Bylaws, including the Arlington Wetland Protection Bylaw, Article 8 and Regulations for Wetland Protection. The Applicant has requested that the ZBA waive specific sections of the Town of Arlington Wetland Protection Bylaw, Article 8 and Regulations for Wetland Protection.

At this time, the Applicant has not provided clear and sufficient information describing the Site, the work, and the effects of the work on wetland resource areas and has not include sufficient information to demonstrate compliance with the general performance standards. As the Project’s design advances, BETA will be able to advise the ZBA on the Project’s regulatory compliance under the Act, and the potential effect on public interests from granting of the requested Bylaw Waivers.

If you have questions about any of these comments, please feel free to contact me at any time. Thank you.

Very truly yours,
BETA Group, Inc.



Marta J. Nover, V.P.
Environmental Sciences

cc: Jenny Raitt, Director of Planning and Economic Development
Kelly Lynema, Senior Planner, Department of Planning and Economic Development
Douglas W. Heim, Arlington Town Counsel

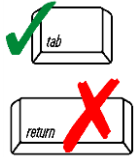




Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 2 – Determination of Applicability
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. General Information

Important:
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



From: Arlington
 Conservation Commission

To: Applicant Daniel St. Clair Name
One Post Office Square, 26th Floor Mailing Address
Boston City/Town MA State 02109 Zip Code

Property Owner (if different from applicant):
1165R Mass Ave MA Property LLC Name
Spaulding & Slye Investments, One Post Office Sqaure, 26th Floor
Boston City/Town MA State 02109 Zip Code

- Title and Date (or Revised Date if applicable) of Final Plans and Other Documents:

<u>Request for Determination of Applicability Packet 1165-1167 Mass Ave. & 0 Ryder Street - Arlington, MA</u>	<u>08/10/2020</u>
Title	Date
<u>Pre-1946 Mill Complex Footprint Exhibit</u>	<u>09/21/2020</u>
Title	Date
<u>Supplemental Materials</u>	<u>09/10/2020 and 09/24/2020</u>
Title	Date
- Date Request Filed:
08/10/2020

B. Determination

Pursuant to the authority of M.G.L. c. 131, § 40, the Conservation Commission considered your Request for Determination of Applicability, with its supporting documentation, and made the following Determination.

Project Description (if applicable):

The RDA requested jurisdiction review for the site under the Wetlands Protection Act:

- Review the Riverfront Area to determine if the property contains a Historic Mill Complex as defined under the Massachusetts Wetlands Protection Act (WPA) Regulations 310 CMR 10.04. The exact Historic Mill Complex boundary is referenced in document #2 listed above.
- Review the Historic Mill Complex exemption request under the Riverfront Area regulations in 310 CMR 10.58(6)(k). The exact Historic Mill Complex boundary is referenced in document #2 listed above.
- Review the existing drainage ditch, known locally as Ryder Brook, and determine if it meets the definition of "stream" in 310 CMR 10.04. The drainage ditch area is depicted by flags SB 1-6 and SB 101-106 in the RDA package referenced in document #1 listed above.

Project Location:

<u>1165-1167 Massachusetts Ave; 0 Ryder Street</u>	<u>Arlington</u>
Street Address	City/Town
<u>57-2</u>	<u>10.B and 15</u>
Assessors Map/Plat Number	Parcel/Lot Number



WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

B. Determination (cont.)

The following Determination(s) is/are applicable to the proposed site and/or project relative to the Wetlands Protection Act and regulations:

Positive Determination

Note: No work within the jurisdiction of the Wetlands Protection Act may proceed until a final Order of Conditions (issued following submittal of a Notice of Intent or Abbreviated Notice of Intent) or Order of Resource Area Delineation (issued following submittal of Simplified Review ANRAD) has been received from the issuing authority (i.e., Conservation Commission or the Department of Environmental Protection).

1. The area described on the referenced plan(s) is an area subject to protection under the Act. Removing, filling, dredging, or altering of the area requires the filing of a Notice of Intent.

2a. The boundary delineations of the following resource areas described on the referenced plan(s) are confirmed as accurate. Therefore, the resource area boundaries confirmed in this Determination are binding as to all decisions rendered pursuant to the Wetlands Protection Act and its regulations regarding such boundaries for as long as this Determination is valid.

2b. The boundaries of resource areas listed below are not confirmed by this Determination, regardless of whether such boundaries are contained on the plans attached to this Determination or to the Request for Determination.

3. The work described on referenced plan(s) and document(s) is within an area subject to protection under the Act and will remove, fill, dredge, or alter that area. Therefore, said work requires the filing of a Notice of Intent.

4. The work described on referenced plan(s) and document(s) is within the Buffer Zone and will alter an Area subject to protection under the Act. Therefore, said work requires the filing of a Notice of Intent or ANRAD Simplified Review (if work is limited to the Buffer Zone).

5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by:

Name of Municipality

Pursuant to the following municipal wetland ordinance or bylaw:

Name

Ordinance or Bylaw Citation



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

B. Determination (cont.)

6. The following area and/or work, if any, is subject to a municipal ordinance or bylaw but not subject to the Massachusetts Wetlands Protection Act:

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7. If a Notice of Intent is filed for the work in the Riverfront Area described on referenced plan(s) and document(s), which includes all or part of the work described in the Request, the applicant must consider the following alternatives. (Refer to the wetland regulations at 10.58(4)c. for more information about the scope of alternatives requirements):

- Alternatives limited to the lot on which the project is located.
- Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
- Alternatives limited to the original parcel on which the project is located, the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality.
- Alternatives extend to any sites which can reasonably be obtained within the appropriate region of the state.

Negative Determination

Note: No further action under the Wetlands Protection Act is required by the applicant. However, if the Department is requested to issue a Superseding Determination of Applicability, work may not proceed on this project unless the Department fails to act on such request within 35 days of the date the request is post-marked for certified mail or hand delivered to the Department. Work may then proceed at the owner's risk only upon notice to the Department and to the Conservation Commission. Requirements for requests for Superseding Determinations are listed at the end of this document.

- 1. The area described in the Request is not an area subject to protection under the Act or the Buffer Zone.
- 2. The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent.
- 3. The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any).

-
- 4. The work described in the Request is not within an Area subject to protection under the Act (including the Buffer Zone). Therefore, said work does not require the filing of a Notice of Intent, unless and until said work alters an Area subject to protection under the Act.



WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

B. Determination (cont.)

5. The area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:

Exempt Activity (site applicable statutory/regulatory provisions)

6. The area and/or work described in the Request is not subject to review and approval by:

Name of Municipality

Pursuant to a municipal wetlands ordinance or bylaw.

Name

Ordinance or Bylaw Citation

C. Authorization

This Determination is issued to the applicant and delivered as follows:

- by hand delivery on by certified mail, return receipt requested on

Date

Date

This Determination is valid for **three years** from the date of issuance (except Determinations for Vegetation Management Plans which are valid for the duration of the Plan). This Determination does not relieve the applicant from complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.

This Determination must be signed by a majority of the Conservation Commission. A copy must be sent to the appropriate DEP Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/>) and the property owner (if different from the applicant).

Signatures:

Date



WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

D. Appeals

The applicant, owner, any person aggrieved by this Determination, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate Department of Environmental Protection Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/>) to issue a Superseding Determination of Applicability. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form (see Request for Departmental Action Fee Transmittal Form) as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant if he/she is not the appellant. The request shall state clearly and concisely the objections to the Determination which is being appealed. To the extent that the Determination is based on a municipal ordinance or bylaw and not on the Massachusetts Wetlands Protection Act or regulations, the Department of Environmental Protection has no appellate jurisdiction.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
Request for Departmental Action Fee
Transmittal Form

DEP File Number:

 Provided by DEP

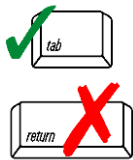
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. Request Information

1. Location of Project

_____	_____
a. Street Address	b. City/Town, Zip
_____	_____
c. Check number	d. Fee amount

Important:
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



2. Person or party making request (if appropriate, name the citizen group's representative):

Name		

Mailing Address		
_____	_____	_____
City/Town	State	Zip Code
_____	_____	
Phone Number	Fax Number (if applicable)	

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name		

Mailing Address		
_____	_____	_____
City/Town	State	Zip Code
_____	_____	
Phone Number	Fax Number (if applicable)	

4. DEP File Number:

B. Instructions

1. When the Departmental action request is for (check one):

- Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- Superseding Determination of Applicability – Fee: \$120
- Superseding Order of Resource Area Delineation – Fee: \$120

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
 Box 4062
 Boston, MA 02211



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

Request for Departmental Action Fee

Transmittal Form

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

Provided by DEP

B. Instructions (cont.)

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/>).
4. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

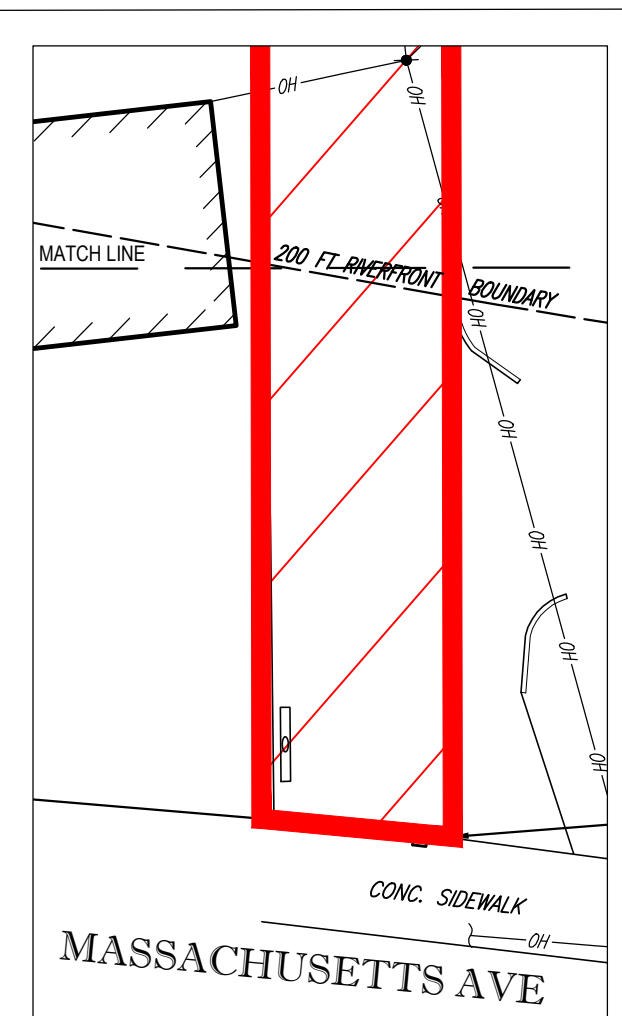


EXHIBIT

TOTAL ON-SITE RIVERFRONT AREA
24,355± SF (0.56 Ac.)

APPROXIMATE MILL COMPLEX
FOOTPRINT AREA
BASED ON RECORD PLANS PRIOR
TO 1946
76,976± SF (1.77 Ac.)

WORKBAR AREA TO BE
SUBDIVIDED FROM
PROJECT SITE



DRIVEWAY TO MASSACHUSETTS AVENUE
SCALE: 1" = 20'

PLAN REFERENCE:
"ALTAINSPS LAND TITLE SURVEY, 1165R MASS MA PROPERTY, LLC" SURVEY BY CONTROL POINT ASSOCIATES, INC. DATED APRIL 6, 2020

BOHLER
SITE CIVIL AND CONSULTING ENGINEERING
PROGRAM MANAGEMENT
LANDSCAPE ARCHITECTURE
SUSTAINABLE DESIGN
PERMITTING SERVICES
TRANSPORTATION SERVICES

REVISIONS

REV	DATE	COMMENT	DRAWN BY	CHECKED BY

811
Know what's below.
Call before you dig.
ALWAYS CALL 811
It's fast. It's free. It's the law.

ISSUED FOR PERMIT

THIS DRAWING IS INTENDED FOR MUNICIPAL AND/OR AGENCY REVIEW AND APPROVAL. IT IS NOT INTENDED AS A CONSTRUCTION DOCUMENT UNLESS INDICATED OTHERWISE.

PROJECT No.: W191330
DRAWN BY: AWP
CHECKED BY: JMJ
DATE: 09/21/2020
CAD ID.: W191330 RDA EXHIBITS

PROPOSED SITE PLAN DOCUMENTS

FOR

1165R MASS MA PROPERTY LLC

PROPOSED RESIDENTIAL DEVELOPMENT

1165R MASSACHUSETTS AVE.
MIDDLESEX COUNTY
TOWN OF ARLINGTON, MA
MAP #57, BLOCK #2, LOT #10B
AND PART OF LOT #15

BOHLER

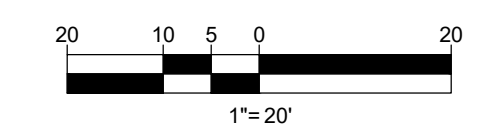
352 TURNPIKE ROAD
SOUTHBOROUGH, MA 01772
Phone: (508) 480-9900
Fax: (508) 480-9080
www.BohlerEngineering.com

J.M. JOHNSON
PROFESSIONAL ENGINEER
MASSACHUSETTS LICENSE # 06550

SHEET TITLE:
PRE-1946 MILL COMPLEX FOOTPRINT EXHIBIT

SHEET NUMBER:
EC-2

ORG. DATE - 08/07/2020



P:\191330\DRAWINGS\EXHIBITS\1165R RDA EXHIBITS - JAY\OUT - EC-2 1946