McGREGOR & LEGERE

ATTORNEYS AT LAW, P.C.

15 COURT SQUARE – SUITE 500
BOSTON, MASSACHUSETTS 02108
(617) 338-6464
FAX (617) 338-0737

LUKE H. LEGERE, ESQ.
E-mail: llegere@mcgregorlaw.com
(617) 338-6464 ext. 126

VIA E-MAIL

November 13, 2020

Joseph Berman, Chair
Weston Conservation Commission
11 Town House Road
Weston, MA 02493

RE: 518 South Avenue / Hanover-Weston 40B
Notice of Intent / DEP File No. 337-1383

Dear Chairman Berman and Members of the Commission:

This firm represents a group of Weston residents and abutters with respect to the Notice of Intent filed with the Weston Conservation Commission (the "Commission") by Hanover R.S. Limited Partnership (the "Applicant") for its proposed construction of a five-story, 200-unit apartment building, 343-space parking garage, wastewater treatment facility ("WWTF"), stormwater management facilities, interior roads, utilities, irrigation well, clubhouse, leasing and management offices, grading, and related features (collectively, the "Project") at 0 (or 510), 518 and 540 South Avenue in Weston (the "Property"). We thank the Commission for the opportunity to provide these comments in response to the Applicant's most recent submittals.

We urge the Commission to issue a denial Order of Conditions for the reasons set forth below. The Project as proposed cannot be adequately conditioned to ensure that the interests of the state Wetlands Protection Act ("WPA") are protected. Indeed, the Applicant has not addressed many of the key issues raised in letters submitted to the Commission by Patrick Garner, Scott Horsley and John Chessia.

The Project would alter sensitive wetland Resource Areas and exacerbate flooding on neighboring residential properties. Specifically, the Project would harm the interests of flood control, pollution prevention, wildlife habitat, groundwater supply, and prevention of storm damage. The Project's deficient design, and resulting harm, reflects the Applicant's decision to shoehorn an unreasonably large number of units into an environmentally sensitive site.

The Project must satisfy applicable performance standards for work in or near jurisdictional wetland Resource Areas on the Property. The Property contains jurisdictional Bank and Bordering

Vegetated Wetlands ("BVW") associated with an intermittent stream.[1] Both Bank and BVW are considered "likely to be significant" to the WPA's interests of public and private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution, and protection of fisheries and wildlife habitat.[2] 310 CMR 10.54(1) and 10.55(1).

As the Commission is aware, the WPA and its implementing regulations at 310 CMR 10.00, *et. seq*. (the "Regulations") broadly define the term "alter" as meaning "to change the condition of any Area Subject to Protection under" the WPA.[3] 310 CMR 10.04.

As set forth below, the Project's proposed work in the jurisdictional Buffer Zone would alter the Bank and BVW "by diminishing or degrading their value relative to the statutory wetlands interests to which these wetland resource areas are significant." Matter of Cohen, Docket No. 99-206, Recommended Final Decision, at 12-13, 8 DEPR 99, 102-03 (February 15, 2001), adopted by Final Decision, 8 DEPR 99 (May 3, 2001).

FLOOD CONTROL AND STORM DAMAGE PREVENTION

Mr. Horsley has opined in his October 19, 2020 letter that groundwater mounding from the Project's WWTF and stormwater system will raise water levels from elevation 212.6 to elevation 213.2 in the BVW. According to Mr. Horsley, this suggests that the groundwater mound will break out above the water surface of the BVW and/or Bank, and thus does not conform with the MassDEP Stormwater Handbook.[4]

Mr. Horsley's opinion is conservative in light of the fact that the Applicant's mounding analysis is incomplete. Both Mr. Horsley and Mr. Garner have commented that the Applicant's mounding analysis accounts for the WWTF effluent and one of the stormwater infiltration systems, but omits the Project's proposed northern stormwater infiltration systems and the pervious pavement driveway proposed directly above the wastewater disposal area.

Tellingly, the Applicant's October 30 response does not address this failure to account for the northern stormwater infiltration systems.[5] Furthermore, the Applicant does not dispute that its

[1] It is our understanding that the designation of the stream as intermittent, rather than perennial, is currently being challenged in litigation. If the stream is ultimately determined to be a perennial, the nature and extent of the Commission's jurisdiction on the Property would greatly increase.
[2] The Project is in close proximity to the Town of Weston's Aquifer Protection Overlay District, which suggests the Project's impact on the WPA's interest of public and private water supply protection may also be a consideration.
[3] "Area Subject to Protection under M.G.L. c. 131§ 40" is defined as being "used synonymously with Resource Area … ." 310 CMR 10.04.
[4] MassDEP Stormwater Handbook, Volume 3, Chapter 1, page 28 states that a "mounding analysis must also show that the groundwater mound that forms under the recharge system will not break out above the land or water surface of a wetland … ."
[5] In its September 11, 2020 letter, the Applicant simply stated that "a mounding analysis is not required under Massachusetts Stormwater Policy for these two systems" due to their separation from groundwater. However, as Mr. Horsley correctly points out in his September 22, 2020 letter, "the purpose of the mounding analysis [is] to determine if, and to what extent stormwater infiltration and wastewater facilities affect the water table. It is not appropriate to pre-judge which facilities might have an impact and exclude them from the analysis."

proposed pervious pavement driveway fails to satisfy required setbacks from the WWTF's disposal areas, and does not even address its failure to meet the minimum 50-foot setback from BVW.

It is also worth noting that the Applicant argues that its mounding analysis does not indicate a breakout above the ground surface between the leaching field and the wetland boundary for a 10-year rainfall event, but does not offer any comment or analysis on whether there would be a breakout as a result of larger storm events (which are occurring with greater regularity). The Applicant's October 30 submittal does recognize that the BVW is likely to experience an increased period of saturation in conjunction with the 10-year storm event.

The Commission has received evidence that flooding associated with the stream and its BVW is a problem under existing conditions, and has in fact been a problem for decades, even under less densely developed conditions in the past.[6] In a November 9, 2020 letter to the Commission, Lou and Rebecca Mercuri – who are direct abutters to the Property and share the wetland system in common – describe their experiences with flooding following storm events. Mr. Mercuri, who grew up at 502 South Avenue and lives there today, has an unparalleled level of personal experience with the nature and characteristics of these Resource Areas spanning decades.

The Commission has also received multiple comments regarding the Project's proposed use of subsurface chambers within the main building as part of its stormwater management system. The Applicant attempts to justify this design by pointing to projects in Boston in Watertown – urbanized, densely populated cities which are not comparable to Weston. The need to take this extreme design measure, which is unprecedented in Weston and similar communities, reflects the fact that the Project is simply far too large for the Property.

Construction of the Project – with its five-story, 200-unit apartment building, 343-space parking garage, WWTF discharging up to 38,000 gallons per day of effluent, stormwater management facilities, interior roads, utilities, irrigation well, clubhouse, leasing and management offices and other features – would alter BVW and Bank, diminishing or degrading their value relative to the WPA's interests of flood control, storm damage prevention, and protection of groundwater. Consequently, it should be denied.

WILDLIFE HABITAT AND WATER QUALITY

Mr. Garner's September 18, 2020 report calls for the Applicant to study and provide the Commission with a report analyzing the WWTF's impact on "the flora and fauna in the wetland resource area." The Applicant committed to do this during the Commission's September 22 hearing, but its October 29, 2020 analysis of the WWTF's impact focused on vegetation without addressing other aspects of its impact on wildlife habitat.

[6] According to the Mercuris, "flooding is already a major problem on our property under existing conditions, especially during periods of heavy rainfall." Mr. Mercuri attests to "several high-water events and flooding in [this wetland system] resulting from large storms in past decades." For example, Mr. Mercuri writes of the heavy flooding in August 1955, "at a time when the nearby residence at 518 South Avenue, the Pope John Seminary, and the row of houses along South Avenue to the west of our property in front of the project site did not exist."

It is critical that the Commission understand and account for the WWTF's total impact on wildlife habitat, including water quality, and not just vegetation. The proposed introduction of massive amounts of effluent to the stream and adjacent BVW would create an unjustifiable risk to those Resource Areas' habitat value and water quality in general.

Specifically, the Commission has received evidence from Mr. Horsley that the Project's proposed discharge of up to 38,000 gallons per day of effluent, as well as stormwater infiltration, increases the likelihood of phosphorous and nitrogen loading into the stream. This, in turn, is likely to cause eutrophication (encouraging growth of vegetation and algae, while reducing oxygen levels available for wildlife) and otherwise degrade water quality. Mr. Horsley has called for the Applicant to evaluate the Project's impact on water quality.

Similarly, Mr. Garner opined in his September 18, 2020 report that the Project's "[a]lteration of [the biochemical oxygen demand] and changes to the chemical characteristics of the soils, groundwater and stream may effect amphibians, reptiles and other animals within the system."

The Applicant does not dispute the Project's expected increase in nutrient loading. Rather, it's October 30 submittal merely indicates that MassDEP will "likely require monitoring of phosphorous concentrations in wastewater effluent … ."

Wastewater is also relatively warm compared to naturally-occurring groundwater.[7] In its September 11, 2020 submittal, the Applicant effectively admits that thermal impacts to Resource Areas would result from the Project, and argues merely that the WWTF and stormwater infiltration systems being located below ground "is a mitigating factor for thermal impacts" and would "reduce any thermal variations in the groundwater, due to stormwater."[8]

The proposed WWTF would discharge up to 38,000 gallons per day of effluent, in addition to a large volume of stormwater from the substantial amount of new impervious surface that the Project would introduce. As Mr. Garner wrote in his September 18, 2020 report, "the enormity of the volume of effluent may alter the wetland system" and creates a "reasonable expectation that physical, biological or chemical characteristics of receiving water will be altered by the constant, large-scale daily pulse of wastewater proposed to enter the wetland system, and consequently, the stream within that wetland."

Rather than performing an evaluation of the Project's impacts to water quality, and providing the Commission with a detailed study, the Applicant is taking the "trust us" approach regarding the nature and extent of the Project's impacts on wildlife habitat and water quality. Given the importance of this issue, and the sheer magnitude of wastewater proposed by the Project, the Commission should have the benefit of objective data and analysis before "trusting" that wildlife habitat and water quality would be adequately protected.

---

[7] In addition, introduction of pervious pavement, fill, removal of trees and impairment of natural vegetation will further threaten to raise the water temperature and otherwise degrade the BVW and stream.

[8] As noted above, the Applicant's October 30 submittal recognizes that the BVW is likely to experience an increased period of saturation in conjunction with the 10-year storm event, but does not address impacts in larger storms.

CONCLUSION

We request that the Commission issue an Order of Conditions denying the Project, which would alter BVW and Bank, intensify flooding and storm damage on neighboring properties, degrade groundwater and harm wildlife habitat.

Due to its size, the Project cannot be conditioned to avoid alteration of Resource Areas and ensure protection of these (and possibly other) interests of the WPA.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions.

Very truly yours,

Luke H. Legere

cc: James Ward, Esq.
Daniel Hill, Esq.