



June 22, 2021

Robert Moriarty Chair
Topsfield Zoning Board of Appeals
8 West Common Street
Topsfield, MA 01983

Via Email: zoning@topsfield-ma.gov

Re: **Perkins Landing, LLC Comprehensive Permit Application 57 Perkins Row, Topsfield, MA**

Dear Chair Moriarty and Members of the ZBA

On behalf of Mass Audubon, I submit the following comments on the application by Perkins Landing, LLC for a Comprehensive Permit under MGL Ch. 40B, Sections 20-23 for a 40-unit condominium complex in twenty duplex buildings on 8.19 acres of land at 57 Perkins Row, Topsfield. Mass Audubon's Ipswich River Wildlife Sanctuary abuts this site, and the property directly abuts the Ipswich River. Mass Audubon recognizes the need for affordable housing, and also the critical importance of appropriate siting and design of development projects of all types.

The project site includes wetlands, floodplain, and Riverfront Area associated with this important and sensitive river system. **It is essential that all wetland resources regulated under the Massachusetts Wetlands Protection Act (WPA), including the Riverfront Area, be properly delineated. In particular, the Riverfront Area depicted on the project plans and subject to jurisdiction under the Massachusetts Wetlands Protection Act has not been reviewed or approved by the Topsfield Conservation Commission.** This delineation should be conducted by a qualified wetland consultant and officially reviewed and approved through a Notice of Resource Area Delineation or Notice of Intent process before the ZBA issues any decision on this project. As explained further below, the Technical Narrative and Site Plan submitted with this application do not fully or accurately describe the status of the purported Riverfront Area delineation depicted by the proponent on the site plans. Development features proposed in the actual Riverfront Area may include buildings, roadways, and stormwater management features, and the extent and location of these need to be reviewed in relation to a Riverfront Area delineation approved by the Conservation Commission. The WPA regulations for Riverfront Area (310 CMR 10.58) are quite specific and limit the amount and types of work allowed, with no exceptions for 40B projects.

The application also does not adequately address other wetlands and water resources issues associated with this project, including, stormwater management and wastewater treatment. These aspects are fundamental to the capacity of the property to support development. Underground stormwater detention facilities are proposed along the edge of the development, on slopes with the use of retaining walls. In addition to the concerns noted herein about the Riverfront Area, this design needs to be closely evaluated for engineering stability particularly considering observed high water levels and the potential for water to impair the functioning of these features or the integrity of the retaining walls. The

Long-Term Stormwater Operations and Maintenance Plan should include inspections of the retaining walls and repairs if needed. The Homeowner's Association will be responsible for inspections and maintenance of the stormwater system. The design needs to be carefully evaluated to ensure that the system will not be prone to failure or high maintenance costs. Potential opportunities to incorporate low impact development features like rooftop infiltration and rain gardens should also be considered to maintain recharge and reduce the amount of stormwater centrally collected. Wastewater is proposed to be managed through a shared leaching field. The Board of Health's review of this aspect of the project in relation to Title 5 is important.

Riverfront Delineation

The Riverfront Area line depicted on the project plan has not been reviewed or approved by the Topsfield Conservation Commission or the Massachusetts Department of Environmental Protection.

The Technical Narrative submitted with the application refers to an Order of Resource Area Determination (ORAD) DEP File No. 307-0720 issued by the Topsfield Conservation Commission on May 14, 2015 and an Order of Conditions OOC under DEP File No. 307-0724 issued on December 18, 2015. It claims these documents as the basis for delineation of wetlands and Riverfront Area as depicted on the plans for the current project. However, ORAD No. 307-0720 specifically states that the Riverfront Area delineated under the ORAD was based on the local bylaw definition, which is different from the WPA definition, and that "No other Resource Area boundaries considered with this Abbreviated Notice of Resource Area Delineation or any others that may exist on this and/or any abutting properties are verified with this Order of Resource Area Delineation." It further states, "This Order does not, however, determine the boundaries of any resource area or Buffer Zone to any resource areas not specifically noted above, **regardless of whether such boundaries are contained on the plans attached to this Order or to the Abbreviated Notice of Resource Area Delineation.**" [emphasis added] The OOC was for an entirely different project, proposing work further from the river than the current project but denied under the Topsfield Wetlands Bylaw. Even if the previously approved delineation under the ORAD remains in effect (it is unclear whether it has expired), the ORAD explicitly states that it does not approve any delineations other than those stated therein, which does not include the Riverfront Area under the WPA.

The proponent should be required to submit a new and complete delineation, including the Riverfront Area under the WPA, conducted by a qualified firm or individual, and reviewed and approved by the Topsfield Conservation Commission. Mass Audubon recommends that the Town also hire a third-party consultant, pursuant to MGL Ch. 44, S. 53G, to review the new delineation when submitted for review.

The unofficial Riverfront Area line depicted on the plan does not appear to be correct. The lower limit of Riverfront Area as defined in the WPA Regulations is the mean annual high-water line. It appears that the mean high-water line extends along the toe of the sloped area on the site, approximately in the vicinity of the bordering vegetated wetlands line. Visual observations made from within the river during periods of time when the flow was below mean high water (as measured by the long-term data from river gauges) found that the water level extended well above what is depicted on the plans for mean high water. If indeed the 200-foot Riverfront Area is more extensive than the unapproved line depicted on project plans, this would place a considerable portion of the area proposed for development within this resource area, possibly exceeding the amount of alteration allowed under the WPA Regulations.

It should also be noted that failure to properly identify the mean annual high water for this project could place the development and residents at risk of flooding and/or failure of the stormwater management system or other development infrastructure. This is of even greater concern in light of increasing storm intensities due to climate change. It is not equitable to site affordable housing on marginal land.

The delineation of the Riverfront Area on this site is a fundamental aspect of development planning for this parcel, and this must be resolved first, before the details of proposed development can be properly reviewed.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Heidi Ricci". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

E. Heidi Ricci
Director of Policy and Advocacy

Cc: Topsfield Conservation Commission