

**DECISION  
CASCADE WAYLAND, WAYLAND, MA**

**Date Application Filed:** July 25, 2017

**Applicant:** Eden Management, Inc. (the "Applicant")  
C/o Steven N. Zieff  
80 Hope Avenue, Suite 512  
Waltham, MA 02453  
The Applicant shall include its successors and assigns.

**Location of Property:** The property is located at 113 and 115 Boston Post Road (Wayland Assessor's Map 30, Lots 70 & 71) and commonly known as 117-119 Boston Post Road. The property is comprised of 6.49 +/- acres in Wayland, MA (the "Property" or "Site"). The Property is located in the Residence Zone 40,000 – 180' Frontage Zoning District.

**Approval Requested:** Comprehensive Permit, G.L. c. 40B, §§ 20-23

**Members Participating:** Jonathan Sachs (Chairman), Aida Gennis, James Grumbach, David Katz and Thomas White (collectively the "Zoning Board of Appeals", "ZBA" and/or "Board").

**Members Voting:** Jonathan Sachs (Chairman), Aida Gennis, James Grumbach, David Katz and Thomas White.

**Hearing Opened:** August 22, 2017

**Hearing Closed:** October 16, 2018

**Date of Vote:** January 8, 2019

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**I. PROCEDURAL HISTORY**

1. On July 25, 2017, the Applicant filed a Comprehensive Permit Application, pursuant to G.L. c. 40B, to construct sixty (60) dwelling units of rental housing consisting of 14 studio units; 23 one-bedroom units; 17 two-bedroom units (34 bedrooms); and 6 three-bedroom units (18 bedrooms) totaling 89 bedrooms. The Applicant is additionally proposing 98 parking spaces both below ground and at ground level (the "Project" or "Development"). Fifteen (15) dwelling units will be affordable to 80% or Area Medium Income ("AMI") in one, 3-story building. There is also proposed to be up to 400 square feet of commercial/management space to support the Project and residents. In revised plans dated January 12, 2018, the Applicant proposed to reduce the footprint of the building and increase the height to four (4) stories.

2. Notice of the public hearing was published in *The Town Crier*, a newspaper with general circulation in the Town of Wayland on August 3, 2017 and August 10, 2017, and notice sent by mail to all interested parties on August 4, 2017 and posted in Town Hall as required by G.L. c. 40A §11 on August 3, 2017.
3. The public hearing was opened on August 22, 2017, and was continued (*without testimony*) to September 26, 2017; October 26, 2017; November 29, 2017; December 20, 2017; January 25, 2018; February 27, 2018; March 29, 2018 (*continued without testimony*); April 25, 2018 (*continued without testimony*); May 22, 2018 (*continued without testimony*); June 28, 2018 (*continued without testimony*); July 17, 2018; September 11, 2018; and October 16, 2018. The Board closed the public hearing on October 16, 2018. The Board secured all appropriate extensions to continue the hearings and to extend the time to act pursuant to 760 CMR 56.05(3) & (8).
4. With technical assistance provided by the Massachusetts Housing Partnership, the Board retained the services of Joseph D. Peznola, PE of Hancock Associates, 185 Centre Street, Danvers, MA 01923, to provide guidance and technical assistance under G.L. c. 40B.
5. The Board retained Tetra Tech, of 100 Nickerson Road, Marlborough, MA 01752 ("Tetra Tech"), to serve as the Board's engineering peer review consultant. Tetra Tech provided engineering peer review services with respect to wetlands, water and sewer capacity, hydrogeologic/groundwater review, stormwater and overall civil design services.
6. The Board also retained The Engineering Corp. ("TEC"), of 65 Glenn Street, Lawrence, MA 01843, to review traffic and Davis Square Architects of 240A Elm Street, Somerville, MA 02144 for an architectural review of the proposed development.
7. The Applicant funded an escrow account to pay for all of the peer review expenses of the Board pursuant to G.L. c. 44 §53G.
8. The Board notified Town departments, boards and committees of this application. The Board received testimony and written comments from the Conservation Commission, Public Works Department, Fire Department, Board of Health, Building Department, Historical Commission, the Treasurer/Collector, Planning Board, and the Surface Water Quality Committee.
9. The Applicant participated in a work session with the Board's peer review engineers, Town departments, abutter group and other technical experts to discuss technical aspects of the proposed project on November 14, 2017.
10. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files.

## **II. FINDINGS**

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40B, §§ 20-23 and its implementing regulations, 760 CMR 56.00 et seq., the Board's Rules and Regulations, and by the Wayland Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearings and comments submitted by Town departments, boards and committees as well as the Board's peer review consultants and residents placed in the public record during the course of the hearings.

### **1. Jurisdictional Requirements**

The Board finds that the Applicant has produced evidence representing that it has met the jurisdictional requirements to apply for and obtain a comprehensive permit as evidenced by the Project eligibility letter #851 issued by MassHousing in a letter dated September 23, 2016.:

- The Applicant asserts that it is a "limited dividend organization" as that term is used in M.G.L. chapter 40B, §21 and 760 CMR 56.04(1)(a), and that the Project is fundable pursuant to 760 CMR 56.04(10)(b), by virtue of a Project Eligibility/Site Approval letter from MassHousing to the Applicant dated September 23, 2016 and
- The Applicant asserts that it has "control of the site" pursuant to the Purchase and Sale agreement dated December 31, 2015 as amended November 11, 2016. Both the Original Purchase and Sale agreement and the amendment provide for a closing date of no later than July 31, 2017. Therefore, the Applicant must produce additional evidence regarding that it has "control of the site."

### **2. Statutory Minimum for Low and Moderate Income Housing**

Based on the most recent Subsidized Housing Inventory maintained by the Department of Housing and Community Development, the Town of Wayland has approximately 5.00% of its available housing units dedicated to low and moderate-income households, therefore it does not meet the 10% requirement, as defined by G.L. c. 40B. The Board finds that the Town of Wayland has not otherwise satisfied any of the statutory minima set forth under G.L. c. 40B.

### **3. Affordable Housing**

G.L. c. 40B requires the Board to balance local concerns with the mandate of G.L. c. 40B and the need to provide low and moderate income housing. The Applicant proposes to finance the construction of the Project under the New England Fund ("NEF") Program of the Federal Home Loan Bank of Boston whereby twenty-five percent (25%) of the dwelling units in the development shall be offered at rents that are affordable to families with a gross annual income that is equal to eighty percent (80%) of the area median income. The Board finds that there is a shortage of low and moderate income housing in Wayland. Subject to the conditions set forth in this Decision, the Project is "Consistent

with Local Needs” within the meaning of G.L. c. 40B §20, and Section 56.02 of DHCD’s Chapter 40B Regulations (760 CMR 56.02).

#### **4. Pine Brook and Associated Wetland Resource Areas**

Most of the Site and the area where the Project is proposed is located within environmentally sensitive and protected areas, including jurisdictional “resources areas” under the state Wetlands Protection Act and Rivers Act, as more specifically defined in 310 CMR 10.00 et seq., including Banks, Bordering Land Subject to Flooding, the 100’ Buffer Zone and 200’ Riverfront Area adjacent to Pine Brook, Bordering Vegetated Wetlands, Pine Brook itself and Land under Water Bodies and Waterways. Pine Brook runs through the Project Site, roughly east to west.

The Massachusetts Department of Fisheries & Wildlife surveyed Pine Brook and stated that it is the most significant habitat for native Eastern Brook Trout in the entire Boston Metro west area. Recently, underwater video and scientific observation showed that native Eastern Brook Trout breed in this section of Pine Brook. Great Meadow National Wildlife Refuge is one mile downstream, providing habitat for a number of endangered species.

The Applicant proposes to construct two large septic leach fields behind the apartment building and next to Pine Brook, with a design capacity of 3.9 million gallons of sewage per year, and an estimated daily flow of 9,900 gallons per day. The Applicant’s hydrogeological study predicts that sewage effluent will ‘breakout’ (reach the surface) in a number of areas on the Site near Pine Brook. This will create (a) biological contamination threats to public health and safety, including to children at YMCA Camp Chickami a short distance downstream (west), and (b) risks to the Pine Brook environment and habitat for native Eastern Brook Trout.

Freshwater streams are subject to eutrophication and can be impaired due to excessive phosphorus (“P”) loading. The U.S. Environmental Protection Agency has established a standard of 50 ug/liter (PPB) for freshwater streams (US EPA, 1986). According to a recent article published by the National Environmental Services Center entitled “Phosphorus and On-Site Wastewater Systems,” the median concentration of phosphorus in septic tank effluent is approximately 10 mg/liter. The article, which cites eight scientific studies, states that some phosphorus is removed as it flows through the septic tank, but removal rates range from 6 to 30%.

As phosphorus moves from the septic tank to a leaching field, its mobility to groundwater or downgradient wetlands and surface waters is attenuated by two chemical processes, precipitation and adsorption. Precipitation causes phosphorus to form a solid mineral that immobilizes in the soil. Adsorption occurs when phosphorus binds to positive-charged mineral particle surfaces. These chemical reactions can significantly retard the movement of phosphorus to groundwater (as compared to the migration of Nitrogen, for example), where it can threaten water quality. However, the NESCC article notes that attenuation is variable and site specific. Attenuation is less successful where soils are

very permeable (sandy and gravelly soils), there is a high water table and/or shallow bedrock, septic systems are located close to surface water bodies such as streams, and areas where is a dense concentration of septic effluent. All of these factors are present here. More precise hydrology and geological information is unavailable due to the well-documented deficiencies in the Applicant's hydrology study.

The totality of the Project's foreseeable impacts on the natural environment and public health combined with the lack of pertinent information justify a denial of this comprehensive permit application. However, the Board is hopeful that the conditions required herein will result in a project that would presumably avoid these impacts, which more appropriately balances the regional need for housing with local concerns.

## 5. Cooperation of Applicant / Reasoning of Decision

All five members of the panel hearing this case expressed their frustrations and concerns, during the hearing while evidence was being taken and in questioning the Applicant and his team, about technical concerns regarding the Project. The concerns focused primarily on the substantial risk of serious environmental damage or degradation arising from the proximity of this very large project (in terms of the number of bedrooms and units, expected human activity, and normal anticipated vehicle and building use and performance) to a nearby fragile ecosystem, to wit, the wetlands and Pine Brook, an important trout breeding stream. The panel and members of the public repeatedly raised numerous questions to the Applicant over the course of many months, in light of compelling technical testimony from abutters and interested residents, supported by several technical experts with impressive credentials, regarding the feasibility of the Project on environmental grounds, due to the significant risk of pollutants or nutrients entering the stream or increasing the water temperature. The risks are due primarily to the large size of the Project, in which the applicant has chosen to design and construct a septic and drainage system, building and paved areas in close proximity to wetlands and an environmentally sensitive brook. While the Board is aware of the need for affordable housing, it has struggled to balance the need for such housing with a need to design and construct such housing in a manner that is responsible and compatible with the site and environment. Specifically, this project appears to be an inappropriate development response to the unique conditions of this site since the decision to provide a specific unit density determines a building envelope size that severely constrains the potential location of the leaching field, the storm water management infrastructure and the paved areas such that they can only be configured on the portion of the site closest to Pine Brook. This design does not appear to be based on the environmental characteristics of this unique property, but instead proposes a solution more appropriate to a generic site where these infrastructure elements would have more potential locations and configurations. The applicants desire to provide 60 units on this particular site results in a building that is substantially larger than the site would appear to adequately support without compromising the safety of the immediate environment.

The Applicant's own team of engineers was unable to provide credible, compelling evidence of adequate safeguards to prevent likely environmental degradation and, indeed, its own technical studies and advisors confirmed that the septic and/or drainage systems, as designed, were likely to fail under reasonably expected conditions. As a result, the Board's technical consultant TEC recommended that the Board allow the special permit only on the condition that the applicant install a waste water treatment plant. However, the panel was advised by its consultants that the expected cost of such a treatment plant would be prohibitive. Additionally, despite the Board's numerous entreaties for more studies and more complete plans, the Applicant elected to defer any further studies or plans until after the decision on the comprehensive permit. The Board members were placed in a dilemma by this Applicant who proposes to design and build a project that is clearly technically unfeasible, and yet refuses to offer reasonable technical assurances, to redesign the Project so as to meaningfully reduce the environmental risks or to explain why significant design changes have not been made. While the Board votes (4-1) to approve the Project, in light of the need for affordable housing, it only did so with the conditions set forth in this decision which, while not economically prohibitive, will provide protection against environmental damage.

## **6. Drainage / Stormwater Management**

Tetra Tech reviewed the Project for conformance with the Wetlands Protection Act ("WPA") Regulations as they relate to the surrounding wetland system due to the hydrologic link between the proposed stormwater management infiltration systems and the on-site and adjacent wetland areas. Review of the Project is expected by the Wayland Conservation Commission during the Notice of Intent (NOI) process. Tetra Tech provided comments indicating potential plan changes which could affect the layout of the proposed Project. Tetra Tech could not perform a complete review as the information provided does not include enough detail to adequately assess and evaluate Project impacts to wetlands resources beyond the comments provided.

Tetra Tech anticipates that the stormwater design may be revised after the Applicant files a Notice of Intent with the Conservation Commission pursuant to G.L. c. 131, § 40. Along with the submission of the Final Plans, the Applicant will be required under this comprehensive permit to provide a complete drainage report reflecting conditions described on the Final Plans and include all supporting documentation necessary to confirm compliance with stormwater standards. The Project will be required to meet or exceed the requirements of the Massachusetts Department of Environmental Protection (DEP) Stormwater Management Regulations, as conditioned by the Board herein.

Additionally, the Board of Health has determined that, as currently designed, the stormwater management is substantially undersized, allowing stormwater runoff from greater than 2-year storms to flow to the stream untreated. Also, the Board of Health has opined that the presence of ledge/bedrock at the site could exacerbate the impacts by limiting the amount of onsite stormwater infiltration and cause potential flooding.

As discussed above, the stormwater management system is designed to recharge runoff from the newly created impervious surfaces (pavement, buildings, etc.) into the ground in proximity to Pine Brook. State stormwater management regulations and guidelines require that runoff from driveways and parking lots must be treated to remove some but not all pollutants before being recharged into the ground, including sand and silt, oil and grease, and organic materials such as leaf litter. However, not all pollutants can be effectively removed from runoff before it enters the ground and groundwater, and state regulations do not require that all pollutants be removed from runoff prior to being infiltrated. For example, the Applicant's stormwater design will not prevent all metals and hydrocarbons commonly associated with road and driveway runoff from entering the groundwater.

Given the presence of state jurisdictional wetlands on the Project Site, the Applicant must prove compliance with the DEP Stormwater Management Regulations under the State Wetlands Protection Act.

#### **7. Wastewater**

The Applicant is proposing an on-site septic system. The Applicant refused to provide details or specifications of the septic system to the Board or the Board of Health during the pendency of the public hearing, despite substantial environmental concerns raised by town boards and commissions, the Board's peer reviewers, and the public at large. It appears that the Applicant is proposing a septic system that would be governed by the performance standards under Title 5 (310 CMR 15.000). Given the proximity of the site to Pine Brook, the Applicant's own Hydrogeologic Report indicating sewage breakout at the bank of Pine Brook, and a design flow only slightly below 10,000 gallons per day, the Project's septic system will present direct and incontrovertible adverse impacts on Pine Brook as discussed above, and necessitates the conditions set forth in this Decision.

The Board of Health, Conservation Commission, Building Department and Department of Public Works have all expressed concern that the septic system as designed will not protect Pine Brook and/or the cold water fishery.

#### **8. Traffic / Safety / Access**

The Property has frontage on Boston Post Road (U.S. Route 20). No rail, bus lines or other forms of mass transit are located within walking distance to the Project Site.

The Property is currently improved with (a) one single-family dwelling in the Victorian style that is approximately 100 years old with a barn and shed located at 115 Boston Post Road, and (b) a former retail garden center with five buildings and a greenhouse located at 113 Boston Post Road. All of the existing alterations are on the north side of Pine Brook. Land surrounding the Site is developed with single-family homes.

A traffic impact and access study and supporting documentation were presented and discussed between the Applicant and the Board's peer review engineering consultant

regarding the adequacy of the roadways and their connections with the Project. The Study Area consisted of the intersections of Boston Post Road and the site driveways; Boston Post Road and Old Connecticut Path; and Westway Road with Old Connecticut Path.

The Applicant has indicated that MassDOT is currently repaving Route 20 between the Wayland/Weston town line to the east and Route 27 to the west. Work will also include building a new sidewalk along parts of the roadway. It is expected that the current construction will result in a continuous sidewalk along the south side of Route 20 from the Project Site to the Wayland town center. The Applicant must ensure that any changes along the Site frontage will include full pedestrian accommodations and will be reflected on all site plans.

Long term improvements are necessary at the intersection of Boston Post Road (Route 20) / Old Connecticut Path / Plain Road. Due to the introduction of new commuter-based traffic by the Project on Route 20 at this intersection, TEC recommended that the Board consider the level of contribution required of the Applicant for funding to be used specifically for the planning and design of future improvements at this intersection. The Applicant indicated amenability to providing a contribution for funding to be used specifically for the planning and design of future improvements at the intersection.

Based upon conversations with TEC, the Applicant relocated the west site driveway to intersect Route 20 opposite the Islamic Center of Boston driveway to provide the most beneficial alignment. The ultimate driveway location is under the jurisdiction of MassDOT and requires approval from that agency. TEC recommended that the Town receive a copy of the MassDOT Permit to Access a State Highway application at the time of submittal to the District 3 office in Worcester. Approval of this Project requires the completion of an approved MassDOT Permit to Access State Highway prior to issuance of a Building Permit.

TEC recommended that the Applicant coordinate with the Town of Wayland School Department to determine the most appropriate location for a school bus stop, including whether the stop will be located along Route 20 or within the site internally. Adequate pick-up and drop-off space must be provided at the agreed-upon bus stop location and shown upon the plans.

During future site plan/building permit reviews, maintenance of vehicular sight lines at the site driveways should be reinforced to ensure safe and efficient turning movements exiting the site.

TEC made recommendations to the Board for conditions which were incorporated in the conditions herein.

## **9. Internal Site Circulation**



The Town of Wayland Fire Chief indicated that access to all sides of the proposed building is necessary and must be maintained year round. Air flow and smoke and carbon monoxide monitoring will be reviewed in greater detail once a full set of plans is submitted. Additionally, the Fire Department has requested a peer review be conducted by a Fire Protection Engineer when a full set of plans is submitted.

The Applicant is proposing to provide 98 parking spaces, 64 within an underground parking garage and 34 aboveground, for the 60 apartment units, a ratio of 1.5 spaces per unit. Five (5) additional spaces are provided in the front of the building. The ITE publication, Parking Generation, 4th Edition for LUC 221 – Low/Mid-Rise Apartment recommends 117 parking spaces for 60 apartment units, a ratio of 1.94 spaces per unit.

There is significant potential for overflow parking to occur along on-site travel aisles or spill over onto adjacent lots.

The number of parking spaces provided on the Site to support the Project continues to be a significant concern. The Site is in a suburban location with no access to public transportation. The closest commuter rail station is close to four miles away and no bus route runs along Route 20. Regardless of the parking supply, the Applicant should identify and implement Transportation Demand Management (TDM) measures to potentially reduce the demand for resident parking in addition to restricting the number of parking spaces available to each unit.

Furthermore, the number of identified visitor stalls for the site remains a concern for the current number of units.

TEC recommends, that Applicant must add parking stalls or reduce the number of proposed units to provide a parking ratio of at least 1.75 overall for this project site.

## **10. Riverfront and Flood Zone**

As discussed above, a significant natural feature of the Project Site is Pine Brook, which crosses the Site. The proposed Project is confined to the north side of the Brook. The Board heard extensive testimony and received substantial evidence regarding wetlands resources on the Project Site and the implications of local bylaws and regulations governing setbacks to wetland resources.

Approximately 85% of the site is located within the Riverfront Area which is an area subject to protection under the Massachusetts Wetlands Protection Act and related Wetlands Protection Regulations (310 CMR 10.00). Projects proposing work within the Riverfront Area are required to meet performance standards under 310 CMR 10.58 which require the applicant to demonstrate that no practicable alternative exists that would result in less impact and that the Project complies with certain minimum standards. Tetra Tech has opined that the Project does not meet minimum standards required for approval, specifically criteria described at 310 CMR 10.58 (5) (a), (c) and (e). In particular, the proposed development will result in a significant net increase in the degraded area within

the Riverfront where no increase is allowed. Final evaluation of Project net impacts on the Riverfront Area falls under the purview of the Wayland Conservation Commission.

Additionally, portions of the Project Site are mapped in a floodway that is not designated and an area subject to stormwater inundation during the 100-year storm event (Bordering Land Subject to Flooding. However, specific flood elevation data is unavailable and the Applicant refused to perform a floodway survey during the public hearing process despite repeated requests made by the Board and the reviewers. The proposed Project includes placement of buildings and changes in grade within the areas subject to inundation and the Applicant will be required to demonstrate that proposed changes will not result in increased flooding on adjacent properties.

Under Federal regulations (40 CFR 60.3(c)), communities are required to determine if building sites “will be reasonably safe from flooding.” The Project has not demonstrated it has met this standard given that Federal Insurance Rate Maps (FIRM) show on-site flood levels as high as elevation 173.5 which is nearly 10 feet higher than the proposed basement floor. The Applicant must determine both base flood and design flood elevations and provide floodway data that demonstrates whether the proposed building and site improvements meets all federal and state requirements. These determinations shall be undertaken and provided at the applicant’s expense by a registered design professional who shall document that the technical methods used reflect currently accepted engineering practice.

Portions of the Site, including areas where the Project’s septic leach fields and driveway to the underground garage and Fire Lane would be located, are within a Special Flood Hazard Area (“SFHA”) defined as Flood Zone A by the Federal Emergency Management Agency (FEMA). As noted, no flood elevation data is available for FEMA Flood Zone A areas, and the Board repeatedly requested that the Applicant deliver a standard flood zone study during the public hearing. Flood elevation data is needed to assess flood risk to the Project structures, properties upstream and downstream, and public safety risks to residents and neighboring properties. Flood elevation data is also needed to ensure compliance with the Massachusetts Building Code (including but not limited to, 780 CMR 107.1, 780 CMR 107.2.5.1, 780 CMR 1612.3.1, 1612.4 and 1612.5), Wetlands Protection Act (e.g. 310 CMR 10) and is required by the National Flood Insurance Program, 44 CFR 60.3(b).

The Board has determined that the Comprehensive Permit may be issued in the absence of floodplain determinations from the Applicant that are required by FEMA and several State regulations and that are also assumed to support the Environmental Findings of the September 23, 2016 Project Eligibility/Site Approval letter. These floodplain determinations are to be undertaken by a registered design official both contracted and compensated by the Applicant that determines the base and design flood elevation and floodway data. The Board conditions the issuance of the Comprehensive Permit so that all referenced floodplain determinations and floodway data have been accepted by FEMA and the applicable state jurisdictions requiring these determinations, in writing and that all required permits have been issued (e.g. Conservation and the Board of Health).

Additionally, all referenced FEMA approvals and required permits shall be required to be submitted prior to submitting a completed application for a building permit to the satisfaction of the Building Commissioner.

### **11. Zoning Bylaw**

The Project Site is located in the Residence Zone 40,000 – 180' Frontage Zoning District, as established on the Town's Zoning Map, which allows for detached single family dwellings by-right, and allows for multi-family dwellings by special permit in accordance with Zoning Bylaw Article 18, Conservation Cluster Development District. Additionally, "Multi-family unit: low-income" is allowed only by a 2/3 vote of Town Meeting.

Dimensional regulations of the Residence Zone 40,000 – 180' Frontage Zoning District require lot sizes of 40,000 lot frontage of 180 feet for by-right uses. Additionally, the District requires minimum front, side, and rear setbacks of 30/55, 30, and 30 feet, respectively.

For the issuance of a comprehensive permit, the Board finds that the Project could not be built in accordance with the above requirements of the Residence Zone 40,000 – 180' Frontage Zoning District.

### **III. CONDITIONS OF APPROVAL**

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board grants to Eden Management, Inc. a Comprehensive Permit to construct 60 dwelling units in a single four story building on the Property in accordance with G.L. c. 40B and its implementing regulations 760 CMR. § 56.00, subject to the conditions and limitations set forth herein.

The Comprehensive Permit described herein incorporates the requested relief from local zoning, subdivision control, Conservation Commission and Board of Health bylaws and regulations identified herein. In granting or denying this relief, the Board recognizes that the legal requirements for issuing a comprehensive permit have been met and finds that the Comprehensive Permit is consistent with local needs as defined in G.L. c. 40B, §20.

#### ***A. ADMINISTRATIVE***

1. This Comprehensive Permit is granted to Eden Management, Inc. and its limited dividend successors and assigns for the purpose of constructing a multi-family rental housing development at 113 & 115 Boston Post Road in Wayland as conditioned herein and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board, as required by 760 CMR 56.05(12) (b) or any successor regulation. Said construction is to be carried out consistent with the Final Plans as defined herein, most particularly in condition number 3, including all notes on the Final Plans, and subject to the conditions set forth in this Decision. The Final Plans shall consist of the following plans (collectively referred to as the

“Preliminary Plans”), which shall be modified as necessary to comply with this Decision, and submitted to the Board as provided herein:

- Beals & Thomas - Title – Cascade Wayland, 7/21/2017 For Permitting. 1/12/18 Revised for Permitting. C 000, EX-1, C 101, C 201, C 301, C 401, C 501,C 502.
- Finegold Alexander - Title Cascade Wayland 1/12/2018. A 100, A 100a, A 101, A 102, A 103, A 104, A 120, A 121, A 201, A 301.

2. This comprehensive permit is issued pursuant to the Applicant’s MassHousing project eligibility letter dated as of September 23, 2016, which approved up to sixty (60) residential dwelling units. In accordance with MassHousing’s final approval process, the Applicant shall submit to MassHousing for review and final acknowledgement of consistency with this Decision, the Final Plans.

3. The Project shall designate not less than twenty-five percent (25%) of the units reserved for rental by qualifying households earning at or below 80% of the area median income, as defined and amended from time to time by the subsidizing agency for this project. Per the subsidizing agency’s rules and guidelines, the affordable units shall be evenly dispersed throughout the Project and shall be indistinguishable from the market rate units in the Project. The affordable units shall remain affordable in perpetuity by deed riders in form and substance acceptable to the subsidizing agency and the Board for the Project.

4. Prior to any ground disturbance, clearance of vegetation, or construction at the site (“Site Activities”), the Applicant shall obtain the Board’s approval of the Applicant’s Final Plans, which shall reflect: (a) the additional plan details and revisions called for under the Conditions set forth herein; (b) any additional changes required by other local boards and agencies to comply with state and federal law, including any Order of Conditions under the State Wetlands Protection Act, Title 5 of the State Environmental Code, and any local regulations not waived by this Comprehensive Permit; and (c) any requirements of MassHousing upon final approval of the Project. Upon completion of Applicant’s Final Plans, the Applicant shall submit its Final Plans to the Board for review to determine consistency with this Comprehensive Permit. The Final Plans shall be reviewed as provided in the conditions herein. Additionally, prior to ground disturbance the applicant shall respond in writing to the Wayland Historical Commission that any archeologically significant artifacts present on site shall be administered as required by 950 CMR 71.00.

5. The Applicant’s Final Plans shall incorporate and include the following design changes and additions to the Preliminary Plans.

- a) School bus pick-up and drop-off location should be approved by the Wayland School Department Transportation Coordinator and designated on the Final Plans.
- b) A lighting and photometric plan showing proposed site lighting, which shall be dark-sky compliant, shall be prepared by a registered professional engineer and submitted with the Final Plans.
- c) Architectural Plans and Elevations prepared in accordance with building permit requirements.

- d) Bus shelters/parking to be clearly shown on the Final Plans.
  - e) Locations for snow storage and/or snow removal shall be shown consistently across the plans, including throughout all phases of construction.
  - f) Details on the trash and recycling plan shall be provided and approved by the Wayland Board of Health.
  - g) Details on water connections to the Town system shall be subject to review for consistency with this Decision.
  - h) Sight distance plans and profiles for all proposed site driveways shall be shown on the Final Plans to ensure that adequate sight distance will be provided.
  - i) Any other modifications or details required by this Decision.
6. The Applicant shall prepare and submit final and detailed stormwater management plans in accordance with the DEP's Stormwater Management Regulations.
7. The Applicant shall apply for an Order of Conditions under the State Wetlands Protection Act for the Final Plans, as conditioned herein, and shall obtain said Order of Conditions prior to engaging in any Site Activities.
8. The Board shall have the power, at a public meeting and without further public hearing to modify or amend the terms and conditions of this Comprehensive Permit on the application of the Applicant, or upon its own motion, to correct technical errors in this Comprehensive Permit, or to address the Applicant's noncompliance with any terms or conditions of this Comprehensive Permit.
9. In the event the Applicant seeks any change in the Comprehensive Permit after this decision is final, any such change must be presented to the Board for approval and for modification of this decision. Within 20 days the Board shall determine and notify the Applicant whether it deems the change substantial or insubstantial, with reference to the factors set forth at 760 CMR 56.07(4).) If the change is determined to be insubstantial or if the Board fails to notify the Applicant by the end of such 20-day period, the Comprehensive Permit shall be deemed modified to incorporate the change. If, during a public meeting, the Board deems a change to be substantial, then the Board shall hold a subsequent public hearing within 30 days of its determination and issue a decision within 40 days of termination of the hearing, at which the Board may approve or disapprove the requested modifications or amendments to this decision, in accordance with the provisions of Mass. Gen. Laws c. 40B, section 21, the provisions of 760 CMR 56.05 (11). The Board will determine whether additional information and advice is necessary from other boards and officials in the event of such substantial change, and will then determine whether the change or requested relief is to be approved and the decision amended accordingly. "Substantial Change" for the purposes of this paragraph shall include, but not be limited to, all matters defined as substantial changes in 760 CMR 56.07(4). If it deems necessary, the Board may at the Applicant's expense retain consultants to review and advise the Board regarding any proposed changes.

10. All easements and covenants affecting the use of the Site have been identified, and such covenants and easements are identified on the Plan of Record. The Applicant shall submit any written or recorded instruments granting or agreeing to such easements and covenants.

11. Unless substantial construction of the Project has commenced as further defined by the issuance of a building permit, the Comprehensive Permit shall expire three years after the appeal period. Any requests for an extension of time shall be made in writing no less than thirty days prior to the expiration of the Comprehensive Permit.

12. Following the passage of the appeal period, the Applicant shall record this Decision at the Middlesex County Registry of Deeds with the plans itemized herein, and provide proof of said recording to the Board of Appeals staff. **No building permits will be issued until this condition is satisfied.**

13. Any transfer of the Project shall be in accordance with 760 CMR 56.05(12) (b). Prior to substantial completion of a Project or a phase thereof, a Comprehensive Permit may be transferred to a person or entity other than the Applicant, upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1)(a) and (b), and upon written notice to the Board. Transfer of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). After substantial completion, a Comprehensive Permit shall be deemed to run with the land and a transfer must be approved by the Board of Appeals after public hearing.

14. Plans. **Within 30 days after the expiration of the appeal period**, the Applicant shall provide the Board and Building Department with four sets of full sized and two sets of reduced copies of the final set of approved plans listed herein, one Mylar plan set in addition to any recordable plan sheets, as well as a digital copy of the final endorsed plan set prior to the issuance of a building permit.

15. Construction Plans. **Not less than thirty days prior to the anticipated start of construction**, and to the degree that the following plans are not part of the plan set described herein, the Applicant shall submit final construction plans to the Board and Building Department, for purposes of confirming that the construction plans are consistent with the requirements of this Decision. The approval of the Building Department shall not be unreasonably withheld. All construction plans shall be stamped by a registered architect or registered professional engineer, as may be applicable. The Board may engage, at the Applicant's expense and upon prior agreement to scope and cost of services, one or more agents to review the plan(s) and make recommendations for approval or disapproval to the degree that a plan or plans are inconsistent with this decision.

16. As-built Plans. **Within sixty days of issuance of the final certificate of occupancy**, the Applicant shall provide "as-built" plans of the roads, buildings, water, and electrical distribution systems to the Board of Appeals, Fire Department, Building Department and Highway Department; such plans shall be approved by the Board or its agent for consistency with this decision. Approval shall not be unreasonably withheld and shall be deemed granted if not reviewed by the Board or its Agent within thirty days of submission by the Applicant. The

Applicant shall provide the as-built plans for the Septic Disposal System to the Board of Health. The Applicant shall provide these plans in digital format acceptable to the Town including but not limited to a format compatible with the Town's Geographic Information System (GIS).

The digital copy of the final set of approved as-built plans must follow the five requirements listed below unless waived by the Building Department:

- a) All plans and specifications must be submitted on electronic media (CD or DVD\_ROM) using an IBM-PC or compatible file format). Acceptable file formats include: AutoCAD \*.dwg, AutoCAD \*.dxf, Arc View \*.shp, or ArcGIS Geodatabase \*.mdb. The files must be identical to the printed plan and contain all information included on the written plan. Upon project completion a digital submission of the "as-built" plan is required prior to receiving a Certificate of Completion from the Building Department.
- b) All digital mapping data must be delivered in the Massachusetts State Plane Coordinate system with a horizontal datum of NAD83 and vertical datum of NGVD88.
- c) Each feature type must be organized in the CAD or GIS data structure as a separate layer using logical layer names. For example, there must be separate CAD layers for buildings, roads, parcel lines, and wetlands. Having all these features in a single CAD layer or GIS file will not be accepted.
- d) Documentation of the data format must be provided with a description of the CAD layers and list of the types of features placed in each layer. Submission of multiple files must also include a list of the files and their purpose.
- e) The data submitted must include documentation on the method used to gather the data, the name of the person(s) responsible for preparing the data, contact information, an estimation of the horizontal and vertical accuracy, and the date of data capture. All media shall be free from any and all defects and viruses, and labeled as to their contents.

17. The Applicant shall promptly pay the reasonable fees of the Board's consultants, for assisting the Board during the public hearing, in preparing this Decision, for post-permit reviews of the plans or documents described herein and for inspections during the construction phase, as may be deemed necessary or appropriate. All consultant fees incurred prior to the issuance of this Decision shall be paid by the Applicant within thirty days after this Decision is filed with the Town Clerk.

18. Copies of all required legal documents including, but not limited to, Regulatory Agreement and Septic Disposal System Maintenance Documents, shall be submitted to the Board and, if necessary, the Wayland Town Counsel for review and comment, **prior to issuance of any certificate of occupancy**. It shall be the responsibility of the Applicant to pay all legal costs associated with the review of this decision, if applicable, as well as documents associated with any condition of approval by Town Counsel.

19. The Applicant shall provide the Board with copies of any and all documents and statements provided by the Applicant to the Subsidizing Agency or its designated auditor of the Applicant's costs and revenues for informational purposes.

20. As a "limited dividend organization," the Applicant's profit shall not exceed what is statutorily allowed for the Development. Any profit in excess of what is statutorily allowed shall be paid in accordance with 760 CMR 56.04(8)(c). Review of the Applicant's limited dividend obligations shall be done in accordance with the Regulatory Agreement. The Applicant shall comply with the requirements of the Development's subsidizing agency and applicable laws, regulations and guidelines.

21. The Board or its agent(s) may enter onto and view and inspect the subject Property during regular business hours, with prior written notice, with consent not to be unreasonably denied or delayed and until as-built plans are approved, to ensure compliance with the terms of this Decision, subject to applicable safety requirements. After completion of construction, the Town's inspection officials shall have authority subject to prior written notice, with consent not to be unreasonably denied or delayed to enter the common areas of the Property for purposes of ensuring compliance with the conditions of this Decision and any other applicable permits, regulations, bylaws and statutes.

22. The Applicant shall provide a contribution of \$35,000 for funding to be used specifically for the planning and design of future improvements at the intersection Boston Post Road (Route 20) / Old Connecticut Path / Plain Road.

### ***B. HOUSING***

23. The Development shall not be age restricted.

24. As a condition of any approval hereunder, at least 25% of the dwelling units shall be and shall remain affordable and shall be marketed to eligible households subject to approval by the subsidizing agency. The Affordable Units shall be and shall remain eligible to be included in the Town's Subsidized Housing Inventory, as maintained by DHCD.

25. The Applicant shall notify the Board and the Town Planner when building permits are issued for Affordable Units and cooperate with the preparation of request forms to add the Affordable Units to the Town's SHI. The Applicant shall notify the Board and the Town Planner when occupancy permits are issued for the Affordable Units and cooperate with the preparation of request forms to add the units to the Town's SHI permanently. The Affordable Units shall permanently remain affordable units, for so long as the Project is not in compliance with the Town's Zoning By-law, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

26. To the extent allowed under G.L. c. 40B and the regulations promulgated thereunder and other applicable law, the Applicant shall provide a preference category for Wayland residents, and their parents and children, and for employees of the Town of Wayland in the initial sales of



the Affordable Units. This preference shall be implemented by the Applicant and the Applicant shall maintain records of its marketing efforts, which records shall be open to review by the Town for compliance with the local preference set forth herein, to the extent such local preference has been allowed by the Subsidizing Agency. The foregoing local preference shall be implemented pursuant to procedures approved by the Subsidizing Agency. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units shall be borne by the Applicant.

27. The Board acknowledges that the Town will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence.

28. The Applicant shall execute a Regulatory Agreement that shall be countersigned by the Subsidizing Agency as required under G.L. c.40B and submit annual reports to the Subsidizing Agency in accordance with the Regulatory Agreement. The Affordable Units shall be identified before building permits are sought and the Affordable Units shall not be segregated from the market rate units.

29. A Regulatory Agreement with MassHousing (or its successor or assign or its designee) is hereby required which will include detailed restrictions in accordance with 760 CMR 56. The Applicant shall provide to the Board a copy of the final executed documents with MassHousing. The Agreement shall contain, at a minimum, the following terms or substantially similar provisions as may be required by the subsidizing agency:

- a) An acknowledgment that the Affordable Units shall remain in perpetuity to the extent allowed by applicable laws. It is assumed MassHousing shall comply with the requirements of 760 CMR 56.05(13).
- b) The Affordable Units shall not be segregated from the market rate units. The Affordable Units shall not be substantially different in exterior appearance from the standard market rate units in accordance with MassHousing guidelines.
- c) Any excess profit, as defined in the Regulatory Agreement, shall be paid to the Town of Wayland pursuant to the Regulatory Agreement.

30. The Applicant shall cooperate with the preparation of request forms to add the Affordable Units to the Town's SHI. The Affordable Units shall permanently remain affordable units, for so long as the Project is not in compliance with the Town's Zoning By-law, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

31. The Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Board and its counsel (the "Town Regulatory Agreement"), which shall be recorded with the Middlesex Registry of Deeds prior to

issuance of any building permit and signed by all necessary parties, including all mortgagees and lien holders of record.

32. The Town Regulatory Agreement: (i) shall only become effective if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (ii) shall require that the Project shall remain 25% affordable so long as the Project does not conform to local zoning; (iii) shall require that at least 25% of the units in the Project shall be affordable and rented by low and moderate income households as that term is defined in M.G.L. Chapter 40B, Sections 20-23; and (iv) shall restrict or limit the dividend or profit of the Applicant only if and as required under G.L. c.40B and 760 CMR 56.00, et seq., and no independent limitation on dividends or profits is imposed hereunder..

33. The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property and shall be enforceable by the Town and shall require that the Affordable units shall remain affordable in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town Zoning Bylaws or for the longest period allowed by law, whichever period is longer.

34. While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible to monitor compliance with affordability requirements pursuant thereto; however, the Town may request and shall be provided by the Applicant with all information that is provided to the Subsidizing Agency and may take any steps allowed under G.L. c.40B and 760 CMR 56.00 in relation to excess profits and enforcement of affordability provisions.

35. If and when the Town Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town or its designee, to the full extent allowed by M.G.L. Chapter 40B, Sections 20-23. However, this clause shall not be used or construed or otherwise exercised in conflict with the holdings in Board of Appeals of Amesbury v. Housing Appeals Committee, 457 Mass. 748 (2010) or any other relevant decisional law or amendment to G.L. Chapter 40B, §§20-23, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of its zoning enforcement powers. At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall provide the Town with a reasonable monitoring fee.

36. If at any time it appears that the Applicant is in violation of an affordable housing restriction, then the Board may pursue such enforcement rights as it may have under the affordable housing restriction and/or applicable law.

37. The Town, by and through the Board or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.

38. The Applicant shall comply with all final approval requirements, as per the Development's subsidizing agency. Prior to receiving any building permit, the Applicant shall

obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Official and the Board.

### **C. CONSTRUCTION**

**39. No Site Activities shall begin prior to a preconstruction conference.** The Applicant shall convene a preconstruction conference with Town departments including, but not limited to, the Building Department, Fire Department, Board of Public Works, Conservation Department and Board of Health at least 14 days prior to the planned commencement of construction. For the purposes of this decision, "commencement of construction" shall occur prior to the demolition of the existing on-site structures. The Applicant shall convene such conference by contacting the Building Department in writing. All relevant contractors and subcontractors involved with site preparation/site construction activities shall attend this meeting. This approval with conditions shall be reviewed by all parties involved. At the conference, a schedule of inspections shall be agreed upon by the Applicant, the Board, and other municipal officials or boards subject to the Board's or its agent's final review and assent.

**40. No construction activity shall occur on the Project, and no building permit shall be issued, until the Applicant shall have:**

- a) Executed and recorded the standard form Regulatory Agreement, and provided evidence of same to the Board and the Building Inspector. The Regulatory Agreement shall be subject to review and approval, as to form and consistency, with this Decision by Town Counsel prior to execution, such approval not to be unreasonably withheld.
- b) Obtained a Disposal Works Construction Permit under Title 5 of the State Environmental Code.
- c) Obtained coverage under the National Pollutant Discharge Elimination System ("NPDES") storm water Construction General Permit (CGP) for the Project.
- d) Submitted to the Board and the Building Inspector a Construction Management Plan (CMP), as well as a Construction Management Schedule (CMS), that generally conforms to industry standard practice and addresses all construction-related conditions specifically set forth in this Decision. Additional copies of the proposed CMP shall be provided to the Planning Board, Board of Health, Fire Chief and Police Chief.
- e) Provide to the Department of Public Works and Building Commissioner a final Stormwater Pollution and Prevention Plan to address specific sedimentation, erosion and dust control, which illustrates, at a minimum, locations of measures such as hay socks, silt fence, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each infiltration system.
- f) Provide procedures to the Health Department, Conservation Commission and Building Commissioner that outline the specific operation and maintenance measures for all stormwater/drainage facilities, including any temporary facilities that shall be employed to minimize or eliminate the threat of transmission of mosquito born diseases to the residents of the Project and nearby residents.

**41. Prior to Site Activities, the Applicant shall provide, and update as necessary, to the Board and Building Department:**

- a) the company affiliation, name, address and business telephone number including 24-hour contact information of the construction manager who shall have overall responsibility for construction activities on site;
- b) a copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Premises have been paid;
- c) certification from the Applicant that all required federal, state and local licenses and permits have been obtained;
- d) proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work (it should be provided for each Phase);
- e) proof that street signage is in place to ensure that emergency personnel can locate the site to provide emergency services to protect and secure the site and construction personnel (if determined necessary by the Fire Department and/or Police Department); and
- f) at least 48 hour written notice. If activity on site ceases for longer than thirty days, 48 hour written notice is required prior to restarting work.

**42. During construction, the Applicant shall conform to all local, state and federal laws regarding noise, odor, vibration, dust, and blocking of Town Roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Exterior construction, other than emergency work or finishing cement, shall not commence on any day before 7:00 a.m. and shall not continue beyond 6:00 p.m.; provided, however, that exterior construction shall not commence on Saturdays before 8:00 a.m. and shall not continue beyond 6:00 p.m. Except for emergency work, and/or exceptions approved in advance, there shall be no exterior construction on any Sunday or state or federal legal holiday. Hours of operation shall be enforced by the Police Department. For this condition, construction activities shall include, but not be limited to: start-up of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; demolition of existing structures; removal of stumps and debris; and erection of new structures. Deliveries shall not commence before 5:30 a.m.**

**43. During construction, at the end of each work day, the Applicant shall cause all erosion control measures to be in place and shall cause all materials and equipment to be secured. Upon completion of all work on site and prior to as-built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.**

**44. The Applicant shall design its final plans with the following specifications:**

- a) The Development shall conform to all pertinent requirements of the Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (MAAB), as applicable.
- b) All signage, including signs to promote sale of the dwellings, shall comply with the Zoning Bylaw and shall be maintained by the Applicant.

45. No tree stumps or other demolition and construction debris shall be buried on the Property. All tree stumps shall either be ground or removed from the Property. No burning is allowed on the Property.

46. The Building shall contain a fire sprinkler system. The Applicant shall submit final fire alarm/sprinkler plans to the Wayland Fire Chief for review and approval. The Applicant shall install sprinklers in compliance with M.G.L. c. 148, §26I, which requires a sprinkler system designated per NFPA code and the Massachusetts State Fire Code, as reviewed and approved by the Fire Chief. All fire protection systems shall comply with the State Building Code and any amendments thereto.

47. Blasting, if any, shall be performed in accordance with regulations of the Commonwealth of Massachusetts, 527 CMR. 13.00, and in accordance with any existing written regulations of the Wayland Fire Department related to blasting. The Applicant shall not use explosives containing perchlorate. Any blasting activity at the site must conform to the requirements of the Town's Fire Department, the State Fire Marshall's Office and any other appropriate regulatory official. Additionally, the Contractor shall be responsible for seismograph monitoring, notification to neighbors within the immediate work area prior to blasting and posting a fire detail on the site. If blasting is required for site construction, the following steps will be taken to monitor/rectify any potential damage as a result of the blasting:

- a) The Applicant shall provide documented inspections, i.e. videotaping, of any foundations and pools within 500' of any expected blast area prior to the start of any blasting;
- b) The Applicant shall provide pre and post blasting water testing for all residents within 500' of any expected blast area prior to the start of any blasting. Water quality, including radon testing, and a specific capacity/short term pumping test shall be included in this testing;
- c) The Applicant or its hired contractors, shall notify those residents within 500' of any expected blast area, when blasting will begin on the site and will again notify them when all blasting is completed;
- d) Blasting hours will be limited from 8:00a.m. to 4:00p.m., weekdays only;
- e) The Applicant shall rectify those problems that are proven to be a result of blasting, i.e. foundation cracking and deterioration in water quality of abutting properties;
- f) Hours of operations pertaining to air hammering or similar practices shall be limited to weekdays between the hours of 8:00 a.m. through 4:00 p.m.

48. All staging areas, including without limitation parking areas for construction personnel, portable toilets, temporary work facilities, etc. shall be on the Property. No parking shall be permitted on Town ways by Project personnel or others in connection with the construction of the Project. **Thirty days following the certificate of occupancy**, construction staging areas shall be cleared and completed in accordance with approved plans.

49. In accordance with 780 CMR 116.2.2, the Applicant shall make the Registered Architects and Registered Professional Engineers employed by the Applicant regularly accessible to the Town of Wayland Building Department staff during vertical construction. "Regularly

Accessible” shall mean that such persons will be identified to the Building Commissioner with names, addresses and cell phone numbers and same shall visit the Project Site generally once a month (or more or less frequently as construction activity may warrant as determined by the Building Commissioner) and will also be available to meet on site with the Building Commissioner as-needed with 48 hours written notice. The Board expressly reserves for the Building Commissioner all rights set forth in the State Building Code including, without limitation, the provisions of 780 CMR 107.6 Construction Control, inclusive, concerning an On-Site Project Representative and 780 CMR 3302.3 Fire safety during construction.

**50.** If construction activity ceases for longer than 30 days, then written notice shall be provided by the Applicant to the Building Commissioner at least 48 hours before resuming work. Pursuant to 780 CMR 33 Safeguards during Construction and applicable states, the Building Commissioner may require that any foundation, trench, structure, equipment or other hazard be secured as necessary, in his opinion, including but not limited to installation of fencing and/or filling of trenches.

**51.** If construction is temporarily suspended during the growing season, all exposed areas shall be stabilized by seeding and/or mulching within 14 days of suspension of construction. If construction is temporarily suspended outside the growing season, all exposed areas shall be stabilized by mulching and tack within 14 days of suspension of construction. Slopes steeper than 3:1 shall be stabilized by netting and pinning during suspension of construction.

**52. Third Party Inspections**

- a) The Town intends to contract for Civil Engineering plan review and inspections that may be needed during the building permit and construction phases. The Applicant shall establish an escrow account in accordance with M.G.L. c.44 § 53G prior to or at the time of submitting the Building Permit application, in order to assure such contracted services are covered, with an initial deposit of \$10,000.00, subject to replenishment.
- b) The Building Department plans to hire third party inspectors to provide for timely review and inspection of building permits related to this project, subject to approval by the Board or its agent. The professional services of a third party in the review of the Applicant’s Building Permit applications are expressly included in this provision. The results of any such inspections shall be provided to the Board in written format.

**53.** Landscaping and lighting shall be as shown on the Project Plans. To the extent that landscaping for the Project is not completed prior to the issuance of the certificate of occupancy, the Applicant shall provide the Town with a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, and in an amount to be determined by the Board in consultation with Town boards and officials and other consultants based upon the Applicant’s reasonable estimate of the costs to complete such landscaping work.

**54.** Prior to Final Plans endorsement, the Applicant shall provide security as provided in and required by G.L. c. 41, §81U to the extent not waived by this Decision, in an amount and form approved by the Board, to secure construction of the internal drives and parking areas, installation of stormwater management facilities, utilities, services, all site amenities including

but not limited to lighting, landscaping, fencing, and any off-site improvements, all as shown on the Final Plans. The face amount of the performance guarantee shall be an amount agreed upon by the Town to the extent not waived by this Decision. The Board shall be guided by the estimate of the Town's Consulting Engineer. A twenty-five percent contingency shall be added as provided in the Subdivision Regulations.

55. Landscaping and lighting shall be as shown on the Project Plans. To the extent that landscaping for the Project is not completed prior to the issuance of the certificate of occupancy, the Applicant shall provide the Town with a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, and in an amount to be determined by the Board in consultation with Town boards and officials and other consultants based upon the Applicant's reasonable estimate of the costs to complete such landscaping work.

56. Project surety shall be held by the Town Treasurer until the Treasurer is notified by the Board to release the surety. Requests to reduce the surety may be submitted as the landscaping work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the completion of the landscaping work.

57. Prior to the commencement of any ground disturbance, clearing of vegetation, or construction the Applicant's engineer shall provide to the Board's peer review engineer (Tetra Tech) a detailed construction sequencing plan, which may be incorporated in the Applicant's Stormwater Pollution Prevention Plans ("SWPPP") in connection with its National Pollutant Discharge Elimination System ("NPDES") Construction General Permit (CGP) coverage, detailed plans of the wetlands delineation and related infrastructure as approved under the Wetlands Protection Act, and a construction traffic management plan during each phase of the work, which includes requirements relative to any and all appropriate signage and police details during the construction phase.

58. The Final Plans shall show the layout of the erosion control devices. An erosion control, construction management and construction sequencing plan(s) showing the construction methods, scheduling, phasing, winter stabilization measures, and location of necessary water pollution and erosion control methods shall be submitted as part of the Final Plans. The Final Plans shall show the location of the storage areas and designation of temporary stump storage or spoils material area, in accordance with state regulations.

59. The Applicant shall pay all reasonable fees imposed for the purpose of inspecting and monitoring the compliance of the Project's construction with the terms of this permit, local bylaw requirements not waived by this permit, and other permits and approvals issued with respect to this Project for which the Town has monitoring responsibility. Any outstanding fees owed for consulting services incurred by the Board before this decision was rendered shall be paid forthwith and before any building permit issues. Thereafter, no occupancy permit shall issue if an outstanding fee bill is 30 days overdue.

60. All fill used in connection with this project shall be clean fill as approved by the applicable Town of Wayland department or official with jurisdiction. Fill shall contain no trash, refuse, rubbish or debris, including, but not limited to: lumber, brick, asphalt, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, appliances, motor vehicles or any part of the foregoing. Any fill subject to specialized disposal in conformance with current environmental criteria shall not be used.

61. In order to provide protection to abutters' trees, the Applicant shall establish and mark on the ground a Limit of Work line at the anticipated limit of grading or excavation. Construction Fencing shall be installed just inside the Limit of Work. Aside from tree protection measures, no work of any kind shall be permitted outside of the Limit of Work line, either above or below ground.

62. Excavation for any retaining wall footings within the drip line of an abutter's tree or a tree on site specified to be saved shall be done using an air spade, either directly by or under the guidance of a Certified Arborist. While constructing any retaining wall, foundation, and backfilling, exposed roots shall be protected as directed by the Certified Arborist.

63. Any required root pruning of abutters' trees, if necessary, shall be performed either directly by or under the guidance of a Certified Arborist. Any such root cutting shall occur only on the Applicant's Property (unless there is permission or legal right to enter onto abutting property) and shall occur only in accordance with all of the requirements of Massachusetts state law.

64. Prior to construction, physical barriers shall be installed, as needed, to provide tree protection. Erosion controls and tree protection measures shall be continuously maintained throughout the course of construction.

65. Adjacent public streets shall be swept as needed to remove sediment and debris.

66. Board members, its staff, consultants or other duly authorized agents of the Town of Wayland shall have the right to enter upon the Property to inspect the site at any time, for compliance with the Final Plans and the terms, provisions and conditions of this comprehensive permit.

67. The Applicant shall include a detailed Photometric Lighting Plan in its Final Plan Submittal to the ZBA. The Lighting Plan shall detail all proposed exterior (including building-mounted fixtures) light fixtures and anticipated light levels and demonstrate that there will be no light trespass onto adjacent property.

68. Prior to the issuance of any building permit the Applicant shall submit plans and supporting materials and calculations for review and approval by the Wayland Fire Department under state law. Submission materials shall demonstrate compliance with all applicable access requirements.



69. Prior to the issuance of any building permit the Project shall submit the approved MassDOT Permit to Access State Highway to the ZBA.

#### ***D. INFRASTRUCTURE - GENERAL***

70. The following portions of the Project shall be and shall remain forever private and the Town of Wayland shall not have, now or ever, any legal responsibility for their operation, maintenance, repair, or replacement:

- a) The entire on-site stormwater management system and all stormwater and water connections, lines and equipment required from the public way to the Property;
- b) The entire on-site sewage management system and all connections, lines, leach fields and other features.
- c) The sidewalks, driveways, roads, utilities, drainage systems, water system, fire protection, gas if applicable, electric, telephone, and cable system and all other infrastructure shown on the Approved Plans as serving the Project, including but not limited to plowing, sanding, snow removal, trash collection, and landscape maintenance;
- d) Property lighting, landscaping and screening.

#### ***E. SEPTIC SYSTEM***

71. The proposed septic disposal system shall be constructed, installed and operated in accordance with all applicable Local, State and Federal laws, rules and regulations, unless specifically waived herein. Copies of all submissions to local, state or federal agencies in connection herewith shall be submitted to the Board at the time of any such submission and the Board shall be provided copies of all notices of meeting or hearings at which the same are to be considered by such agency, and the Board or its designees shall be provided the opportunity to participate in such proceeding.

72. The Applicant shall provide for pretreatment prior to discharge to the subsurface sewage disposal system. The Applicant shall update the hydrogeological study as further outlined in Conditions below, providing an analysis of the expected water quality of the raw waste effluent and water quality at the wetland edge up gradient of Pine Brook. The study shall conform to the hydrogeological study requirements of the Massachusetts Guidelines for the Design, Construction, Operation, and Maintenance of Small Wastewater Treatment Facilities with Land Disposal. The Applicant shall provide sufficient pre-treatment to insure no measurable levels of any of the contaminants can be detected at the wetland edge up gradient of Pine Brook.

73. The Applicant shall propose an acceptable operation and maintenance plan for the septic system. The Applicant shall propose an acceptable financial surety mechanism to cover the cost of the operation, maintenance, monitoring and system replacement.

74. The Applicant shall revise its hydrogeological study as follows:

- a) record elevation data for Pine Brook, with model reports showing results during peak and minimum flows.
- b) identify and evaluate all sources of water that may impact the adjacent wetlands and Pine Brook, including storm water.

- c) identify the location of and specifications for the final septic system or sewage treatment plant proposed for this Project.
- d) perform predictive modeling using the mass balance analysis method set forth in MassDEP's guidelines for nitrogen sensitive areas to calculate anticipated concentration of contaminants in the groundwater as they enter the wetland system bordering Pine Brook, including Biochemical Oxygen Demand (BOD) nutrients (nitrogen and phosphorus), pathogen (bacteria and virus).
- e) perform predictive modeling to analyze levels of total suspended solids (TSS), water temperature, and water quantity (surface and subsurface flows) at the adjacent wetland system bordering Pine Brook
- f) propose a water quality monitoring program through the installation and maintenance of a series of monitoring wells at suitable intervals between the system and the wetland. The monitoring program shall comply with Conditions herein.
- g) include a groundwater mounding analysis using the USGS MODFLOW model that evaluates the long-term (steady state) groundwater conditions that may result from the cumulative effects of wastewater and stormwater infiltration. This will include all storm events on a year-round basis and not be limited to the 'design' storms.

The proposed scope of the revised hydrogeological study shall be first submitted to the Board prior to the Applicant undertaking the additional analysis. The completed study and report shall then be submitted to the Board for its review prior to the Applicant's submission of an application for a Disposal Works Construction Permit under Title 5 with the Board of Health. The Board will review the report with the assistance of its peer review consultant (Tetra Tech) and in consultation with the Board of Health. The Applicant shall not proceed with any additional Site Activities and shall not obtain a building permit until the Board approves the revised hydrogeological report, which approval shall be limited to the completeness of the study and report, and conformity with the scope approved by the Board. The Board may elect to retain the services of an independent hydrologist to advise the Board in its review of the Applicant's revised scope and revised report, and the fees of any such consultant shall be paid by the Applicant from the Section 53G account.

**75.** The Applicant must fund the installation and operation of water quality monitoring wells at locations on the Site specified in the approved revised hydrological report, along with sampling of water at locations in Pine Brook, with all water samples obtained and tested every three months. Water samples shall be tested for the level of total suspended solids (TSS), biochemical oxygen demand (BOD), phosphorus, nitrogen, bacteria, and viruses. Before the issuance of any building permits, these wells shall be installed and operational for the first round of water quality samples and testing, to provide a baseline to compare to future changes. The Applicant shall pay all costs for this water quality monitoring process, for as long as any sewage treatment system or storm water management system at the Site is in use.

**76.** Prior to submission of a building permit application to demolish or construct, the Project shall submit a Notice of Intent and obtain an Order of Conditions from the Wayland Conservation Commission pursuant to the requirements of, and demonstrating compliance with, all applicable performance standards of the Massachusetts Wetlands Protection Regulations (310

CMR 10.00) and demonstrating that proposed stormwater discharges will not significantly alter Pine Brook.

#### ***F. FLOOD ZONE***

77. Prior to submittal of a Notice of Intent to the Wayland Conservation Commission or the issuance of any permit authorizing placement of fill on site or the construction of any buildings, the Project shall perform all analysis required to document Base Flood Elevations using detailed methods described in the FEMA Zone A Manual (FEMA 265/JULY 1995) Managing Floodplain Development in Approximate Zone A Areas.

78. Prior to a completed building permit application being submitted the Applicant will file with FEMA and secure FEMA's determination that confirms the applicant's delineation of the SFHA with all required base and design flood elevations that includes floodway data that affirms no increase of flood risk to Wayland property owners.

79. A building permit shall not be granted for the Project until (1) a Letter of Map Amendment (LOMA) application and Elevation Certificate application have been filed with the Federal Emergency Management Agency (FEMA) by the Applicant based on the flood zone study described above, and (2) a LOMA and National Flood Insurance Program Elevation Certificate have been granted by FEMA for the Site, showing that the Project does not create enhanced flood risk to residents, properties upstream / downstream and the Pine Brook environment.

#### ***G. STORMWATER MANAGEMENT***

80. Prior to issuance of any construction permit the Project shall submit fully-engineered stormwater management design plans and calculations, with an accompanying Stormwater Report complying with the state stormwater management standards and handbook, for review and administrative approval by the ZBA for conformity with these conditions and the state stormwater management standards.

81. The use of de-icing agents should be tightly restricted to that absolutely necessary for safety in consideration of water quality concerns. Sodium Chloride is not to be used for de-icing and only Calcium Chloride or other more environmentally protective alternative shall be used for de-icing operations. Snow and ice from snow removal operations shall be carefully controlled onsite to assure that any snow removed from the parking and roadway areas shall be deposited in the areas shown as "Snow Storage Areas" on the approved snow storage plan. These restrictions and limitations shall be included in any maintenance contracts.

82. The Applicant shall demonstrate compliance with MassDEP's Stormwater Management Standards. The Applicant will provide an Operations and Maintenance Plan and Long-term Pollution Prevention Plan prior to the issuance of the building permit.

83. No stormwater collection systems or other water collection area to be constructed by the Applicant as part of the Project shall hold water for more than 72 hours, to prevent the breeding

of mosquitos, except for “wet ponds” built in compliance with MassDEP Stormwater Management Regulations. The Applicant, and subsequently the rental management company, shall implement any necessary mosquito control measures to protect residents of the Project and nearby residents in the event that water collects for longer than 72 hours.

84. Snow shall never be placed within or above the stormwater management systems.

85. Stormwater Management Conditions.

- a) **Prior to starting any site work**, the Applicant shall provide a copy of the final SWPPP and NPDES Construction General Permit to the Board. The SWPPP shall be provided to the contractors during construction and a copy must be kept on site during construction.
- b) The Applicant shall comply with the SWPPP during construction.
- c) The Applicant shall protect the subsurface infiltration system during construction in order to prevent a reduction in the long-term infiltration capacity of the soil. Once construction is complete the system shall be cleaned of any silt and sediment. Removal and replacement of soil shall be completed to make certain that the infiltration rate of the soil is met. The use of silt sacks within the proposed catch basins shall be used during construction.
- d) The post Development impervious areas shall be consistent with the impervious areas shown on the design plans which were used to analyze and size the stormwater management system.
- e) The as-built conditions shall closely match the drainage areas shown on the post-development drainage map included in the stormwater report.
- f) Any imported fill shall have the same drainage characteristics as the existing site soils for which the stormwater analysis and design are based.

86. Stormwater Management Maintenance. **Prior to the issuance of the final certificate of occupancy**, the Applicant's registered professional engineer shall prepare a stormwater Operations and Maintenance Plan (O&M Plan) containing guidelines for the operation and maintenance of the stormwater management system. In the event a management company is engaged; such guidelines shall be incorporated by reference in the management contract.

- a) The final Stormwater O&M Plan shall be recorded at the registry of deeds **prior to substantial completion of construction**. Evidence of recording shall be presented to the Board and the Building Department **prior to issuance of the final certificate of occupancy**.
- b) In the event that the Applicant or its successor fails to maintain the stormwater management system in accordance with such guidelines for operation and maintenance, after notice to the Applicant or successor and the failure to reasonably cure, the Town may perform necessary maintenance or repairs and the Applicant or successor hereby authorizes the Town to enter the Property for this purpose. In such event, the Applicant or successor shall reimburse the Town for any and all expense associated therewith; in the event of nonpayment, the Town may place a lien on the Property and any improvement thereupon. All costs incurred by the Town in connection with its performance of such required maintenance on the Property shall

be reimbursed by the Applicant or its successor to the Town within thirty (30) days of receipt of the Town's invoice for such costs, which shall constitute a municipal charge or fee, pursuant to M.G.L. c. 40, §§57 and 58.

- c) The Stormwater O&M Plan and Long-Term Pollution Prevention Plan shall be combined into a letter sized, bound document and provided to the Property Owner and Operator **prior to the final certificate of occupancy**. The condition shall also require compliance with this document in perpetuity. This document shall include a simplified site plan that would highlight the location of the various Best Management Practices (BMPs). This document shall be separate from the required SWPPP and facilities related O&M plan.

#### ***H. GENERAL CONDITIONS***

**87.** The Applicant or Rental/Property Management Company shall be responsible for all snow plowing and proper maintenance of all access ways and sidewalks so that same are kept accessible year-round for pedestrian and emergency access and egress satisfactory to the Town's public safety departments.

**88.** The lawn area maintenance shall be instituted for reduction/elimination of pesticides and fertilizers as recommended by the "Healthy Lawns for Healthy Families" program.

**89.** Except where specifically waived by this Comprehensive Permit, construction shall be in accordance with all applicable zoning and other bylaws, rules and regulations of the Town. In the event that the Applicant or the Board's site/civil engineering consultant, in the final design of the Project, determines that additional waivers not shown on the Plans are required, the Applicant shall be required to obtain such additional waivers after written request to the Board. The Board may grant or withhold such additional waivers in accordance with applicable rules and regulations.

**90.** The Applicant shall include a detailed Photometric Lighting Plan in its Final Plan Submittal to the ZBA. The Lighting Plan shall detail all proposed exterior (including building-mounted fixtures) light fixtures and anticipated light levels and demonstrate that there will be no light trespass onto adjacent property.

**91.** Prior to the issuance of any building permit the Applicant shall submit plans and supporting materials and calculations for review and approval by the Wayland Fire Department under state law. Submission materials shall demonstrate compliance with all applicable access requirements.

**92.** The Applicant and/or the Rental/Property Management Company shall be permanently responsible for the following at the Project:

- a) all plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the Approved Plans or alternate locations acceptable to the Fire Chief. In the event that snow impairs ways such that the travel area is less than eighteen feet wide, and all designated snow removal locations have

been exhausted, at the direction of the Fire Chief, the Applicant shall cause snow to be transported from the Project to an off-site location for the legal disposal thereof;

- b) all site maintenance and establishing a regular schedule for site maintenance;
- c) repairing and maintaining all on-site ways, including drainage structures and utilities therein;
- d) conducting annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines; and
- e) site lighting and landscaping.

93. Applicant shall provide enhanced screening between the Development and Boston Post Road. Enhanced screening shall consist of a minimum of continuous non-deciduous vegetation with a minimum height of ten feet to be monitored and replaced if necessary.

94. The bus shelter and parking lot shall be constructed prior to the issuance of any occupancy permit.

95. Prior to the submittal of an application for any building permit to construct, the Applicant shall submit the approved MassDOT Permit to Access State Highway to the ZBA.

96. Applicant shall pay for the Town's cost of Police and Fire details for the Project.

97. All utilities and water construction and materials shall be constructed consistent with the Final Plans and otherwise in accordance with Town of Wayland requirements except as otherwise shown on the Final Plans.

98. All utilities within the Premises shall be installed underground.

99. No stumps or construction debris shall be buried or disposed of at the Property.

100. The Applicant shall equip each dwelling unit with low-flow toilets and high-efficiency water sense faucets and 1.5 gallon shower heads to reduce water usage.

101. The Project shall be served by municipal water, at the Applicant's sole expense, in accordance with the Wayland Department of Public Works requirements.

102. All proposed signage shall be compliant with MUTCD standards and the appropriate signage plans be included in the Final Plans subject to the review and determination of consistency with this Decision by the Board and the Town's Safety Officer.

103. The Applicant shall work with the Wayland School Department to identify a safe location for the school bus stop and ensure that the planned stop location has adequate sight lines. Details of the specific location and any accommodations shall be included in the Final Plans and reviewed by the School Department and applicable public safety personnel.

**104.** Any retaining wall and fencing details shall be submitted to the Building Commissioner for review and determination of consistency with the Final Plans and applicable State Building Code requirements.

**105.** If any part of this Decision is for any reason held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other portion of this Decision.

**106.** The Applicant shall provide enough parking spaces to meet the recommended 1.75 spaces per unit parking ratio recommended by the Board's Peer Review Consultant (TEC).

**107.** The on-site parking spaces shall not use off-site persons or businesses, except for the following:

- a) "Resident" means a person who has a signed rental agreement for a unit on the Site.
- b) An "Accessible Space" is a parking space compliant under Americans with Disabilities Act (ADA) 2010 regulations, including four Accessible Spaces arranged in two pairs, with each space a minimum of nine feet wide and an access aisle between them that is a minimum of eight feet wide.
- c) "Employee" means a person employed to provide services to the Project or Residents and / or maintenance of the Project.
- d) "Service Company" means a company engaged to provide maintenance services for the Project.
- e) "Visitor" means a person visiting a Resident, which shall be for a period of no more than two consecutive days.

**108.** Rental agreements signed by Residents shall prohibit non-residents from parking cars at the Property, unless the non-residents are Visitors using designated 'Visitor' parking for a short term and shall specify that parking for over-sized vehicles, recreational vehicles, trailers, boats and other similar non-standard vehicles shall be prohibited.

**109.** Rack(s) shall be provided to park and lock a minimum of ten bicycles.

### ***I. WAIVERS***

**110.** With respect to the Applicant's request for waivers from local bylaws and regulations submitted with its Application, the ZBA only approves those waivers specifically listed in Exhibit 1. The Project and Applicant must comply with all Wayland bylaws and regulations not waived, and all Conditions.

**111.** If any conflict arises between waivers granted and Conditions, these Conditions shall take precedence and govern the Project.

**112.** Except as specifically waived by this Decision, the Project shall conform to all applicable local, state and federal laws, codes, regulations and standards including, but not limited to, the following:

- a) International and Massachusetts Building, Plumbing, Fire Protection, Elevator, Access and Electrical Codes, including payment of all fees of the Town of Wayland imposed generally in respect to construction projects and for the purposes of

- monitoring compliance of the Project's building construction and occupancy in accordance with this Comprehensive Permit;
- b) The Massachusetts Wetlands Protection Act and Rivers Protection Act (M.G.L. c. 131 §40) and the associated State Wetlands Protection Regulations (310 CMR 10.00);
  - c) Massachusetts Department of Environmental Protection (DEP) Wastewater Regulations;
  - d) EPA, DEP and Wayland Stormwater requirements and accepted industry best management practices for construction of the drainage infrastructure;
  - e) U.S. Army Corps of Engineers, Regulatory Program under Section 404 of the Federal Clean Waters Act;
  - f) Regulations governing the Massachusetts Environmental Policy Act (MEPA), compliance with which shall be a condition precedent to the commencement of work authorized under this Comprehensive Permit and no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until any applicable requirements of MEPA have been complied with in full;
  - g) All rules, regulations, filing and permit requirements and certifications required by regulations issued pursuant to the Massachusetts Endangered Species Act (MESA), compliance with which shall be a condition precedent to the commencement of work authorized by this Comprehensive Permit and no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until any applicable requirements of both Acts have been complied with in full; and
  - h) The rules, regulations, filing and permit requirements and certifications of the DEP, compliance with which shall be a condition precedent to the commencement of work authorized by this Comprehensive Permit and no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until the requirements of DEP have been complied with in full.

113. The Applicant submitted a revised list of requested waivers to the Board following the hearing on September 11, 2018. The Waiver list and the Board's action on the requested waivers is attached as Exhibit 1 and incorporated herein.



**IV. RECORD OF VOTE**

On January 8, 2019, the Board, on a motion made by James Grumbach, seconded by David Katz, voted 4-1-0 (Sachs, Grumbach, Katz and White voting in favor; Gennis voting opposed) to approve the **Comprehensive Permit** application of Eden Management, Inc., or its nominee to allow for development as conditioned herein at 113 and 115 Boston Post Road (Wayland Assessor's Map 30, Lots 70 & 71) and commonly known as 117-119 Boston Post Road.

The Board has complied with all statutory requirements for the issuance of this Comprehensive Permit. A copy of this decision will be filed with the Town Clerk. Copies of this decision have been, or will be mailed, to all parties, persons or boards as required by M.G.L. c. 40B.

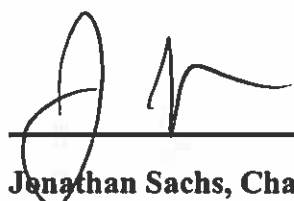
**The grant of this comprehensive permit hereunder is dependent upon compliance with all of the conditions set forth above and upon the following additional terms and conditions.**

This Comprehensive Permit Decision shall be a master permit which shall subsume all local permits and approvals normally issued by local boards, as that term is defined in 760 CMR 56.00 et seq. Upon presentation of this Comprehensive Permit and subsequent more detailed final plans as required pursuant to this Decision and in order to obtain other relevant approvals, together with final approval from MassHousing pursuant to 760 CMR 56.04(7), all Local Boards shall take all actions necessary, including but not limited to issuing all necessary permits, approvals, waivers, consents, and affirmative action such as plan endorsements and requests for waivers, after reviewing such plans only to ensure that they are consistent with this Comprehensive Permit (including any waivers or lack of waivers set forth herein), the final approval of the Subsidizing Agency, and in compliance with applicable state and federal laws, regulations, and codes.

On January 8, 2019, the Board voted to authorize the Chairman, Jonathan Sachs, to sign this decision on behalf of the Board. (Motion by James Grumbach, second by David Katz; unanimous).

Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided by M.G.L. c. 40A, § 17 or M.G.L. c. 40B, §20 et seq., as applicable.

**Zoning Board of Appeals of the Town of Wayland**

  
\_\_\_\_\_  
Jonathan Sachs, Chair

Date JANUARY 15, 2019

**H. LAPSE**

Any comprehensive permit granted hereunder shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the event of any appeal and as provided in 760 CMR 56.05(12)(c)), unless the comprehensive permit is duly recorded before the three year period elapses and unless construction on the Project has commenced within such period. In addition, construction in accordance with this comprehensive permit shall be completed within three years of the commencement of construction. The Applicant may apply to the Board for reasonable extensions of these deadlines for good cause, but shall do so before any lapse occurs.

This comprehensive permit shall not be valid until it is duly recorded with the Registry of Deeds and evidence of such recording is provided to the Building Inspector and the Board. Any modification of this comprehensive permit shall be subject to 760 CMR 56 or any successor regulation thereto.

**NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK**

I hereby certify that this is a true copy of the decision rendered by the Board of Appeals and filed in the office of the Town Clerk on \_\_\_\_\_, \_\_\_\_\_; I further certify that twenty days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wayland, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

\_\_\_\_\_  
Town Clerk

**EXHIBITS**

1. List of Waivers

## EXHIBIT 1

### WAIVERS

After consideration and deliberation, the Board voted on the requested waivers on January 8, 2019 as follows:

#### **A. CHAPTER 198, TOWN OF WAYLAND ZONING BYLAW:**

##### **1. Section 198-501.1 - SIGNS AND EXTERIOR LIGHTING:**

The zoning by-laws require a 15-foot front yard setback for any signage or exterior lighting. The proposed project includes signs and exterior lighting fixtures within the 15-foot setback. Waiver is requested from the minimum setback requirements for exterior lighting and signage. To provide effective way finding for resident, guests, visitors and pedestrians Applicant will install identification and wayfinding signs on walls or low shrubbery behind the edge of sidewalk on either side of the entrances proximate to the R.O.W. The signs will be up lit with low voltage lighting. The setback may be as little as 1 foot.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT a waiver from § 198-501.1 of the Town of Wayland Zoning Bylaw.**

##### **2. Section 502.1; 502.2; 502.3 - TEMPORARY SIGNS:**

The zoning by-laws prevent temporary signs to exceed 15 square feet and prohibits more than one temporary sign during construction. Applicant requests a waiver to allow developer and general contractor to place several mandated or necessary temporary signs during construction. These include DEP, construction safety, construction ingress / egress to minimize fouling of Route 20, responding to questions, emergency / afterhours contacts, affordable housing, NPDES, contractor, lender and team identity and contacts.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT a waiver from §§ 502.1; 502.2; 502.3 of the Town of Wayland Zoning Bylaw.**

##### **3. Section 504.1 - EARTH REMOVAL:**

The proposed Project includes earth removal more than 500 cubic yards. Waiver requested from the by-laws which restricts earth removal in excess of 500 cubic yards in the Residential zoning district. It is estimated the building foundation will require the movement of approximately 9,100 cubic yards. Subject to the quality of the material some of the parent material may be utilized for backfill.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT a waiver from § 198-504.1 of the Town of Wayland Zoning Bylaw.**

4. Section 506.1.10 - OFF-STREET PARKING:

Applicant requests a waiver from the minimum parking spaces required by the by-laws by providing 64 spaces in the garage and 34 exterior spaces for a total of 98 spaces.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from § 198-506.1.10 of the Town of Wayland Zoning Bylaw.**

5. Section 506.8 - LANDSCAPING IN PARKING FACILITIES:

Applicant requests waiver to the bylaw. Nature of design and safety makes it impossible to screen the parking area from adjacencies. The definition of "10%...shall be landscaped" is arguable to interpret. Applicant proposes preliminary landscape design demonstrates the Project in compliance of the bylaw.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from § 506.8 of the Town of Wayland Zoning Bylaw.**

6. Section 506.7.5 - STANDARD PARKING DIMENSIONAL REGULATIONS:

Applicant requests relief from the dimensional parking regulations to allow normal and compact spaces as shown on the proposed plans. With the exception of Handicap spaces, all exterior stalls shall be 9 x 18.5; all interior stalls shall be 8 x 18.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT a waiver from § 198-506.7.5 of the Town of Wayland Zoning Bylaw.**

7. Section 804; Table of Uses (4) & (57) - SCHEDULE OF USES:

The Project is a multi-family structure which is not allowed as a matter of right within the zoning district. Waiver is requested from the use regulations to allow multi-family dwellings.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT a waiver from § 804; Table of Uses (4) & (57) of the Town of Wayland Zoning Bylaw.**

8. Section 901 - SINGLE RESIDENCE DISTRICT:

The zoning by-laws prohibits business or office use. Applicant requests waiver to allow leasing and management facilities for the benefit of the residents and visitors as demonstrated in the Project plans.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT a waiver from § 901 of the Town of Wayland Zoning Bylaw.**

9. Section 704 - LOT COVERAGE:

Lot coverage for multifamily use is not defined in the Table of Dimensional Requirements. Including the parking and paved areas the use is approximately 17% lot coverage. The building alone is approximately 9% lot coverage.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT a waiver from § 704 of the Town of Wayland Zoning Bylaw if such a waiver is required.**

10. Section 701 - HEIGHT RESTRICTIONS:

The Applicant is requesting a waiver from the height regulation to allow a structure of four (4) stories. Under the Mass State Building Code the building is calculated as 46.75 feet. Under Wayland's regulations the building is considered 53.0 feet. In either case the Applicant seeks a waiver of stories and height as needed in order to construct the building as proposed and demonstrated.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from § 701 of the Town of Wayland Zoning Bylaw.**

11. Section 702 – SETBACKS:

Setbacks for Multifamily use is not defined in the Table of Dimensional Requirements. We request a waiver from the Bylaw for a design which reflects a 46' front yard setback, 150' side yard setback and a 130' rear yard setback.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from § 702 of the Town of Wayland Zoning Bylaw as such waiver is not necessary for the Development.**

12. Article 22 - INCLUSION OF AFFORDABLE HOUSING:

The Zoning Board of Appeals shall act as the comprehensive permit granting authority.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Article 22 of the Town of Wayland Zoning Bylaw as the Board is the Comprehensive Permit Granting Authority by statute.**

**B. CHAPTER 193, TOWN OF WAYLAND STORM WATER AND LAND DISTURBANCE RULES AND REGULATIONS**

1. Chapter 193 - STORMWATER AND LAND DISTURBANCE:

Applicant seeks a waiver from this Chapter as the Zoning Board of Appeals is provided with the authority to issue all local approvals. The Project meets the intent of the DEP Stormwater Handbook and will be subject to a Notice of Intent.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Chapter 193 of the Town of Wayland Storm Water And Land Disturbance Rules And Regulations.**

2. Section 1 - PURPOSE AND OBJECTIVE:

The purpose of the Wayland Stormwater and Land Disturbance Regulations is to expand upon the requirements of state and federal statutes and regulations relating to stormwater and illicit discharges. Applicant requests a waiver from these requirements and states the Project will comply with the State and Federal wetlands regulations.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section 1 of the Town of Wayland Storm Water And Land Disturbance Rules And Regulations.**

3. Section 4 – APPLICABILITY:

The local regulations require issuance of a Stormwater Management and Land Disturbance Permit (SMLDP). Applicant requests a waiver from these requirements and states the Project will comply with the State and Federal wetlands regulations.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section 4 of the Town of Wayland Storm Water And Land Disturbance Rules And Regulations.**

4. Section 5 – WAIVER:

The Zoning Board of Appeals is allowed to waive strict compliance with any requirements of Chapter 193. Applicant seeks a waiver from this section as the Zoning Board of Appeals is provided with the authority to issue all local approvals and further states the Project will comply with the State and Federal wetlands regulations.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section 5 of the Town of Wayland Storm Water And Land Disturbance Rules And Regulations.**

5. Section 7 – ENFORCEMENT:

Applicant seeks a waiver from this section as the Zoning Board of Appeals is provided with the authority to issue all local approvals.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT/DENY a waiver from Section 7 of the Town of Wayland Storm Water And Land Disturbance Rules And Regulations.**

**C. CHAPTER 194, TOWN OF WAYLAND WETLAND AND WATER RESOURCE BY-LAWS**

1. Chapter 194 - WETLAND AND WATER RESOURCE:

Applicant seeks a waiver from this section as the Zoning Board of Appeals is provided with the authority to issue all local approvals. Applicant will Comply with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 C1vIR 10.00 et. seq.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Chapter 194, the Town of Wayland Wetland And Water Resource Bylaw.

2. Section 1 - PURPOSE:

The purpose of the Wayland Wetlands and Water Resources Protection Regulations is to provide a greater degree of protection of wetlands, buffer zones, and related water resources, than the protection of these resources areas provided under M.G.L. c. 131, § 40. Applicant requests a waiver from these requirements and states further that the Project will Comply with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 et. seq.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section 1 of the Town of Wayland Wetland And Water Resource Bylaw.

3. Section 3(A) – PROCEDURE

Per the Wayland regulations, a written application and a filing fee for Request for Determination or Notice of Intent is required in conjunction with filings under G.L. c. 131, § 40. Applicant requests a waiver from this requirement and will Comply with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 et. seq.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section 3(A) of the Town of Wayland Wetland And Water Resource Bylaw.

4. Section 3(B) – PROCEDURE:

The regulations require a review by other Town boards and officials; issuance of "wetlands and water resources permit" in conjunction with order of conditions pursuant to G.L. c. 131, § 40. Applicant requests a waiver from this requirement and will Comply with the Massachusetts Wetlands Protection Act, G.L. c. 131, §40 and 310 CMR 10.00 et. seq.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT a waiver from Section 3(B) of the Town of Wayland Wetland And Water Resource Bylaw.

5. Section 4 - PUBLIC HEARING:

Applicant requests waiver from public hearing to address local wetlands by-laws. Applicant wishes to submit for a public hearing under State WPA.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT a waiver from Section 4 of the Town of Wayland Wetland And Water Resource Bylaw.

6. Section 8 - BURDEN OF PROOF:

The regulations place the burden on the Applicant of proving by a preponderance of the credible evidence that the work proposed in the notice of intent will not cause harm to the functions and values sought to be protected by this Chapter. The Applicant requests a waiver from this burden

and further states that it will Comply with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 et. seq.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section 8 of the Town of Wayland Wetland And Water Resource Bylaw.

7. Section 9 – SECURITY:

Applicant seeks a waiver of Section 9 which allows the Commission to require a security in addition to any security required by any other Town or state board, commission or agency. Applicant will Comply with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 et. seq.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section 9 of the Town of Wayland Wetland And Water Resource Bylaw.

**D. CHAPTER 194, GENERAL WETLAND REGULATIONS DATED JUNE 12, 2014:**

1. Section C(4) - ENFORCEMENT ORDERS:

The regulations provide the Conservation Commission with the authority to issue an Enforcement Order for a violation under Chapter 194 of the Wayland bylaws. The Applicant requests a waiver from this burden and further states that it will Comply with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section C(4) of the Town of Wayland General Wetland Regulations, Dated June 12, 2014.

2. Notification of Watercourse Alternation - RIVERFRONT AREA:

Applicant proposes work will alter a riverfront. The Applicant requests a waiver from this burden and further states that it will Comply with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 et. seq.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Notification of Watercourse Alternation, Riverfront Area, of the Town of Wayland General Wetland Regulations, Dated June 12, 2014.

3. Notification of Watercourse Alternation – STREAMS:

The Applicant requests a waiver from this burden and further states that it will Comply with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 et. seq.

**VOTE:** On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Notification of



**Watercourse Alternation, Streams, of the Town of Wayland General Wetland Regulations, Dated June 12, 2014.**

**E. WAYLAND BOARD OF HEALTH REGULATIONS**

1. Board of Health Regulations - BOARD OF HEALTH REGULATIONS:  
Applicant seeks a waiver from this section as the Zoning Board of Appeals is provided with the authority to issue all local approvals.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from the Town of Wayland Board of Health Regulations.**

2. Floor Drain Regulation Wayland Board of Health - FLOOR DRAIN REGULATION  
WAYLAND BOARD OF HEALTH:  
As part of the Project the snowmelt and other rain will need to be collected in a floor drain and discharged to an industrial holding tank. The collected rain and snowmelt will not go into a septic system. The Applicant requests a waiver from this local regulation.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from the Town of Wayland Floor Drain Regulation.**

3. Regulations for On-Site Subsurface Disposal Systems, Section I(D)(3) - GROUND  
WATER TESTING SEASON:  
Applicant requests waiver from the limitations of the ground water testing season as required by Section 3.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section I(D)(3) of the Town of Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems.**

4. Section II(C)(I) - LEACHING FACILITIES:  
The Board of Health Regulations sets a maximum volume of sewage design flow to 165 gallons per bedroom per day for new construction of multiple dwelling units. The Applicant requests a waiver from this local regulation and will comply with the requirements of 310 CMR 15.203 which is a design flow of 110 gallons per bedroom per day.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section II(C)(1) of the Town of Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems as the Property is located in a highly sensitive environment and the Applicant failed to submit adequate evidence.**

5. Section II(C)(2) - LEACHING FACILITIES:

The Board of Health allows leach fields, leaching trenches, leaching pits and leaching galleys to be designed to Title 5 standards with approval of the Director of the Board of Health. Applicant requests a waiver from the requirement to obtain approval from the Director as the system will be designed to Title V standards and the Zoning Board of Appeals is provided with the authority to issue all local approvals.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to GRANT/DENY a waiver from Section II(C)(2) of the Town of Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems.**

6. Section II(D) – DISTANCES:

Section II(D) regulates the location of disposal facilities. The Applicant requests a waiver from the local regulations to build the Project as proposed by the Plans, which are in conformance with state (Title V) regulations.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section II(D)(2) of the Town of Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems.**

7. Section II(G)(2) - PUMP DESIGNS:

Board of Health Regulations require no more than 1 inch of effluent on each dose cover. Applicant requests a waiver to have effluent greater than 1 inch, a dimension which is in compliance with Title V regulations.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section II(G)(2) of the Town of Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems.**

8. Section II(G)(5) - PUMP DESIGNS:

Board of Health regulations require that the distribution boxes shall be "back vented" to the pump chamber with a minimum 2 inch PVC schedule 40 pipe. Applicant requests waiver from this requirement in order to comply with State (Title V) regulations.

**VOTE: On January 8, 2019, the Board, on a motion made by Jonathan Sachs, seconded by James Grumbach, voted 5-0-0 to DENY a waiver from Section II(G)(5) of the Town of Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems.**