



TESTIMONY OF CLARK L. ZIEGLER
EXECUTIVE DIRECTOR, MASSACHUSETTS HOUSING PARTNERSHIP
TO THE JOINT COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
REGARDING H. 887, AN ACT RELATIVE TO ON-SITE SEWAGE DISPOSAL SYSTEMS
JUNE 17, 2025

160 Federal Street
Boston, Massachusetts 02110
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On behalf of the Massachusetts Housing Partnership (MHP), thank you for the opportunity to submit testimony regarding H. 887, which would set additional limits on local regulation of on-site sewage disposal systems. I apologize for being unable to testify at your hearing in person due to a conflict with an MHP board meeting.

As the committee may be aware, more than a hundred local boards of health in Massachusetts have adopted local septic regulations that exceed the requirements of the State Environmental Code, Title 5. While the stated purpose of these regulations may be to address environmental concerns, many of these local policies are simply a means to slow housing development or to reduce housing density and have no basis in science.

In January 2002, Governor Cellucci's Commission on Barriers to Housing Production identified local septic regulations as a major impediment to new housing. It recommended new legislation that would require prior review and approval of local septic regulations by the Department of Environmental Protection (DEP), in which cities and towns would have to document any unique local conditions and provide a scientific justification for any variance from Title 5. H. 887 is one of dozens of bills that have been filed over the last 22 years to implement that recommendation, none of which has become law.

The issue of restrictive local septic regulations was extensively considered over the last 18 months by a new Unlocking Housing Production Commission (UHPC), on which I served as an appointee of Governor Healey. While the commission initially considered reviving the 2002 recommendation, our discussions with senior DEP leadership convinced us that allowing up to 351 different DEP-approved septic system standards is not good policy nor would it be administratively workable. The principles of environmental science do not change when crossing a municipal border, and all-volunteer boards of health do not typically have the scientific expertise to determine what degree of regulation is necessary and reasonable. It is not a good use of DEP's busy professional staff to respond to each of these disparate local standards in a piecemeal fashion.

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While these local septic regulations may have been adopted with good intent, they are simply not advancing environmental protection in the Commonwealth – in fact, they are doing just the opposite. Their general effect is to require larger lots for single-family homes and to discourage higher density housing with shared septic systems. The evidence is clear that large-lot homes consume more land, use more water, emit more carbon, and encourage more automobile use than compact development in walkable neighborhoods. In line with our state housing and environmental goals, DEP’s statewide Title 5 regulation promotes much more “smart” growth than is allowed under our current patchwork of local regulations.

A recent case study in Sudbury (included as an attachment to this testimony) puts the impact of these overly restrictive local regulations in perspective. A 120-unit senior housing development called the Coolidge at Sudbury was permitted by the Sudbury Zoning Board of Appeals (ZBA) and built by a nonprofit developer pursuant to the state’s affordable housing law, Chapter 40B. Under that law, developers of affordable housing must comply with all state environmental regulations and may request waivers of local requirements on a case-by-case basis. The project complied with all DEP regulations and has operated for more than a decade without any environmental concerns after receiving waivers of local septic regulations and wetland bylaws from the local ZBA. Had the excessive local environmental requirements been in effect, the amount of housing permitted on the site would have been cut by more than half, from 120 to 58 units. Extrapolating to the Commonwealth as a whole, these local regulations may be limiting the state’s housing potential by tens of thousands of units without providing any demonstrated environmental benefit.

Attached to this testimony is proposed legislation that would implement the UHPC recommendation. In lieu of H. 887 MHP strongly encourages the committee to substitute this language with a favorable report.

MHP would be happy to provide any additional information and we appreciate your consideration.

Attachments:

- (1) Hancock Associates case study on Coolidge at Sudbury
- (2) Proposed legislation

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May 31, 2024

Massachusetts Housing Partnership
Clark Ziegler, Executive Director
160 Federal Street
Boston, MA 02110

RE: Study on the Effects of Local Environmental Regulations on Multifamily Housing
Development: 187-189 Boston Post Road

Dear Clark,

Hancock Associates is pleased to provide you with the results of a recent theoretical study looking at the impact on the Coolidge at Sudbury project at 187-189 Boston Post Road, Sudbury to see the impact of the imposition of local Board of Health and Conservation Commission regulations on the project's number of housing units.

The project is a two-phase affordable housing development for seniors developed by B'nai B'rith Housing. Each phase was permitted through Massachusetts General Laws Chapter 40B Sections 22-23 with the Sudbury Zoning Board of Appeals and by the Sudbury Conservation Commission under the State Wetland Protection Act governing regulation (310 CMR 10.00). The project received waivers from nearly all local requirements of the Sudbury Rules Governing the Subsurface Disposal of Sewage and the Sudbury Wetlands Administration Bylaw and Regulations.

Phase 1 was constructed in 2014 and consists of a 64-unit senior living facility with surface parking, a sewage disposal system, a stormwater management system, and other utilities. Phase 2 was constructed in 2020 and consists of a 56-unit senior living facility with underground parking, surface parking, a sewage disposal system, a stormwater management system, and other utilities. The project fully complies with the Massachusetts State Sanitary Code, known as Title 5 (310 CMR 15.0) and the state Wetlands Protection Regulations (310 CMR 10.0).

We understand that the Governor's Commission on Unlocking Housing Production is now examining whether local septic regulations and wetlands bylaws create unreasonable barriers to new housing production, particularly since these local requirements may be adopted without any scientific justification and do not require any state review or approval. The size and density of affordable housing developments like Coolidge at Sudbury that have obtained comprehensive permits are an excellent way to quantify this lost housing market potential because Chapter 40B allows a waiver of any

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local regulation that exceeds state standards. No such waivers are available for privately-financed, market rate housing development.

Our analysis looks to identify the impact of adherence to these types of regulations on higher a higher density housing projects in a community without municipal sewer. Our analysis found the following provisions of the local Sudbury regulations being most impactful:

Sudbury Rules and Regulations Governing the Subsurface Disposal of Sewage:

- Section III states that “Residential square footage requirements are based on sidewall area only”. This regulation exceeds the requirements of Title V (310 CMR 15.000) which includes bottom of trench. This requirement increases the land area needed by 50% for a septic systems soil absorption system commonly referred to as a leaching field.
- Section III states that “Leaching beds are not permitted”. This regulation requires all leaching areas be standard trench systems. The existing development has Presby Enviro-Septic systems which are alternative bed systems.
- Section IV states that “For multi-family residences that qualify under Title V as being ‘housing for the elderly’, sewage design flow for one-bedroom units shall be 180 gallons per day”. All units in the proposed development are one-bedroom. The existing development is designed for 110 gallons per day per Title V requirements.

Sudbury Wetlands Administration Bylaw Regulations:

- Adjacent Upland Resource Areas are defined as “...all lands within 100 feet of wetland resource areas...” The bylaw “gives the Conservation Commission broad discretion to permit, condition, and prohibit work within the adjacent upland resource as the specific situation warrants. The applicant shall carry the burden of proof for demonstrating to the Commission’s satisfaction that the proposed work or activities in the adjacent upland resource are necessary and that reasonable alternatives, including reducing the scale and scope of the project, do not exist.” This regulation treats the 100-foot buffer zone defined in the state Wetlands Protection Regulations as an actual protected resource area. Our experience with non-Chapter 40B projects in Sudbury subject to the local Wetland Regulation has the real possibility for the Conservation Commission to prohibit all work within the 100’ Adjacent Upland Resource Area. We therefore have eliminated any work in the area in our yield analysis.

Findings

The results of our analysis are shown on the accompanying plan. The top window of the plan shows the permitted and built project. The lower window shows the results of compliance with the local Board of Health and Conservation Commission regulations.

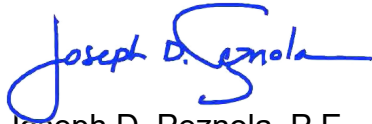
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Phase 2 of the project is eliminated due to the need for additional septic leaching area and vacating the 100' Adjacent Upland Resource Area. The Phase 1 building is cut back from 64 units to 58 units due to the need to further reduce the leaching area needed. This takes the number of affordable housing units from 120 total units to 58 total units, a 52% reduction. This represents a density reduction from 20 units per acre to 9.7 units per acre.

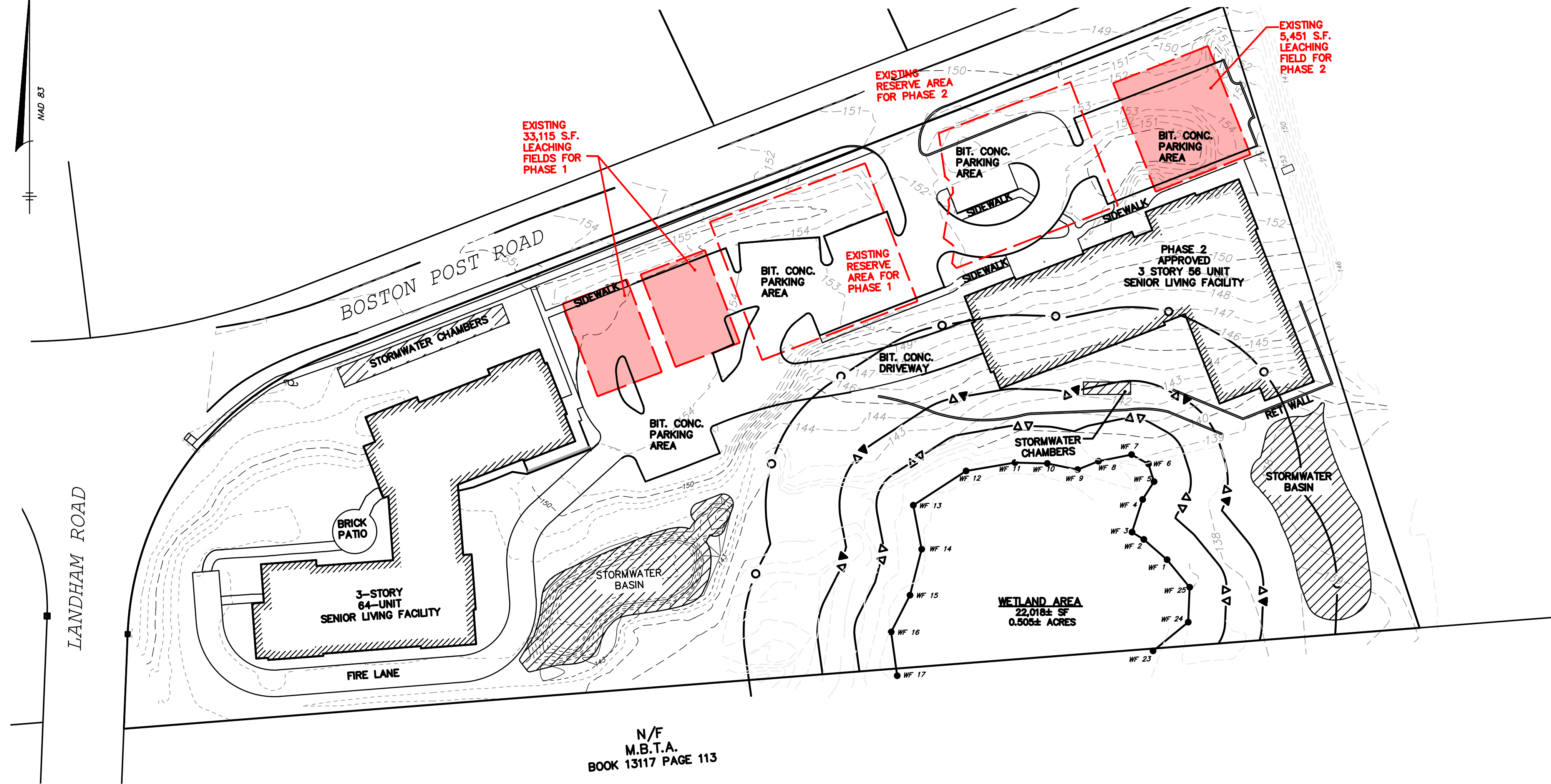
Thank you for the opportunity to assist MHP with this research. We at Hancock remain committed to the support, design and permitting of high-quality affordable housing projects in the Commonwealth. If you have any questions, please call 508-460-1111 or email jpeznola@hancockassociates.com.

Sincerely,



Joseph D. Peznola, P.E.
Director of Engineering

TWO PHASE PROJECT AS APPROVED THROUGH 40B COMPREHENSIVE PERMIT PROCESS



NOTES:

1. THE PURPOSE OF THIS PLAN IS TO SHOW A SENIOR LIVING FACILITY DEVELOPMENT THAT IS COMPLIANT WITH CURRENT SUDBURY BOARD OF HEALTH REGULATIONS, 310 CMR 15.000, AND SUDBURY WETLANDS ADMINISTRATION BYLAW REGULATIONS.

2. 58 PARKING SPACES ARE PROVIDED FOR 58 UNITS. WAIVER REQUIRED TO ALLOW 1 SPACE PER UNIT. WAIVER WAS GRANTED FOR BOTH PHASE 1 AND PHASE 2.

DESIGN CALCULATIONS:

PHASE 1

OCCUPANCY: 67 BEDROOMS
DAILY SEWAGE FLOW: 67 BEDROOMS X 110 GPD = 7,370 GPD
PERCOLATION RATE: 3 MINUTES PER INCH
LEACHING REQUIREMENTS: 0.74 GPD/SF (CLASS 1 SOIL)
PRESBY REQUIREMENTS: 3,685 LINEAR FEET REQUIRED
LEACHING AREA REQUIRED BY TITLE 5: 7,370 GPD / 0.74 = 9,960 SF
LEACHING AREA REQUIRED UTILIZING PRESBY ENVIRO-SEPTIC LEACHING FIELD SYSTEM: 9,667 X 0.6 = 5,800 S.F. LEACHING AREA PROVIDED WITH TWO FIELDS @ 67'L X 46.5'W X 2 = 6,231 SF*

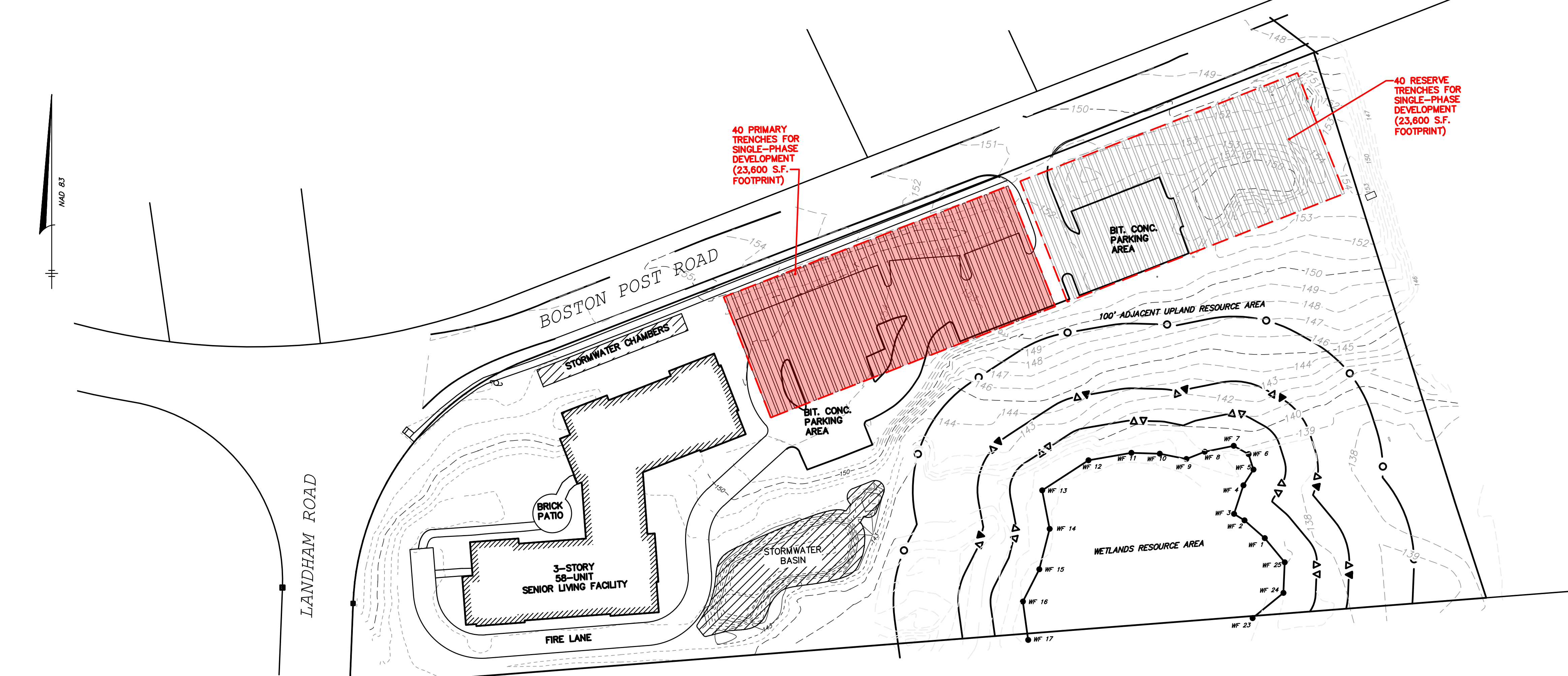
PHASE 2

OCCUPANCY: 56 BEDROOMS
DAILY SEWAGE FLOW: 56 X 110 GPD = 6,160 GPD
PERCOLATION RATE: 7 MINUTES PER INCH
LEACHING REQUIREMENTS: 0.68 GPD/SF (CLASS 1 SOIL)
LEACHING AREA REQUIRED BY TITLE 5: 6,160 GPD / 0.68 = 9,059 SF
LEACHING AREA REQUIRED UTILIZING PRESBY ENVIRO-SEPTIC LEACHING FIELD SYSTEM: 9,059 X 0.60 = 5,436 S.F.
LEACHING AREA PROVIDED WITH ONE FIELD @ 69'L X 79'W = 5,451

RELIEF REQUIRED FROM LOCAL SEPTIC REGULATIONS:

- RELIEF FROM SECTION III WHICH STATES "LEACHING BEDS ARE NOT PERMITTED"
- RELIEF FROM SECTION III WHICH STATES "SQUARE FOOTAGE REQUIREMENTS ARE BASED ON SIDEWALL AREA ONLY".
- RELIEF FROM SECTION IV.B WHICH STATES THAT FOR HOUSING FOR THE ELDERLY, A SINGLE BEDROOM UNIT SHALL HAVE A DESIGN FLOW OF 180GPD.
- RELIEF FROM SECTION VI WHICH STATES THAT SEWAGE PUMPS OF ANY KIND ARE PROHIBITED FROM ANY DWELLING UNITS SYSTEM

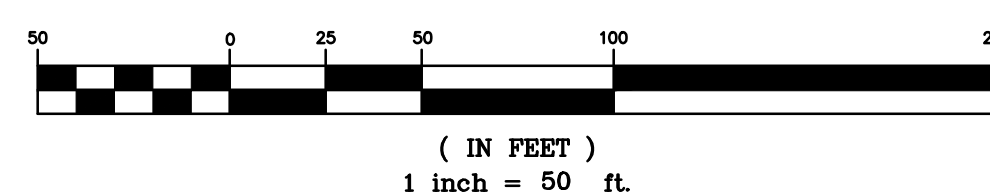
PROJECT AS COMPLIANT WITH LOCAL REGULATIONS



DESIGN CALCULATIONS:

OCCUPANCY: 58 BEDROOMS
DAILY SEWAGE FLOW: 58 BEDROOMS X 180 GPD = 10,440 GPD
PERCOLATION RATE: 8 MINUTES PER INCH (PERC 09-06-3)
LEACHING REQUIREMENTS: 0.66 GPD/SF (CLASS 1 SOIL)
LEACHING AREA REQUIRED BY TITLE 5: 10,440 GPD / 0.66 = 15,818 SF
LEACHING AREA PROVIDED WITH 40 TRENCHES @ 100'L X 2'W X 2'D = 16,000 SF*
*ONLY SIDEWALL AREA COUNTED PER SUDBURY BOH REGULATIONS

GRAPHIC SCALE



THE COOLIDGE AT SUDBURY

187-189 Boston Post Road
Sudbury, MA 01776

PREPARED FOR:

Massachusetts Housing Partnership

160 Federal Street
Boston, MA 02110

HANCOCK ASSOCIATES

Civil Engineers

Land Surveyors

Wetland Scientists

315 ELM STREET, MARLBOROUGH, MA 01752
VOICE (508) 460-1111, FAX (508) 460-1121
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NO.	BY	APP.	DATE	ISSUE/REVISION DESCRIPTION
DATE:	5/31/24	DESIGN BY:	DJR/JTL	
SCALE:	1" = 50'	DRAWN BY:	DJR/JTL	
APPROV. BY:	JP	CHECK BY:	JTL	

CONCEPTUAL YIELD PLAN

PLOT DATE: May 31, 2024 8:48 am
PATH: V:\Unit\Yield\40B 3D Project\18772-Massachusetts Housing Partnership-Sudbury\Eng\DWG\

DWG: 18772 CEX-r1.dwg

LAYOUT: C-SAS

SHEET: 1 OF 1

PROJECT NO.:

C1

18772

The first paragraph of Section 31 of Chapter 111 of the General Laws is hereby amended to read as follows:

Boards of health may make reasonable health regulations provided that no regulation or amendment thereto which relates to the minimum requirements for subsurface disposal of sanitary sewage shall exceed the requirements of the state environmental code. A summary which shall describe the substance of any regulation made by a board of health under this chapter shall be published once in a newspaper of general circulation in the city or town, and such publication shall be notice to all persons. Whoever, himself or by his servant or agent, or as the servant or agent of any other person or any firm or corporation, violates any reasonable health regulation, made under authority of this section, for which no penalty by way of fine or imprisonment, or both, is provided by law, shall be punished by a fine of not more than one thousand dollars.