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M E M O R A N D U M

TO: Glenn Remick, Project Manager, Design and Construction, Facilities Management, Town of Wellesley, MA

FROM: Cassie Bethoney RLA

DATE: July 1, 2025 | Revised July 9, 2025

SUBJECT: Morses Pond Beach & Bathhouse Feasibility
Site Constraint Clarifications

During early discussions in this feasibility study, the following topics were raised requiring clarification. A summary of outcomes is provided below. Further discussion on each topic follows.

Topic	Key Outcomes
Zone I Wellhead Protection Area Restrictions	No new land uses are permitted unless they are for water supply or shown to have no significant impact. Occasional parking may be allowable with precautions.
ADA Parking and Accessibility	Existing parking lot can satisfy ADA and staff/public parking with modifications. No requirement for parking within 200' or drop off with 100' of buildings applies. Building location is not restricted.
MBTA Commuter Line Adjacencies	Work within 30' of MBTA property requires a license and coordination with MBTA. Surveying recommended to confirm actual boundary. The proposed scope of improvements under this project can avoid work within the 30’ offset.
Resiliency Considerations	The 100-year FEMA flood elevation has increased slightly to 124.2 NAVD88. As a potential option, the Town may consider 126.4 NAVD88 as the new minimum finished floor elevation (FFE) for a future bathhouse, which is based on the Design Flood Elevation + 12” of freeboard. Apart from elevating buildings to reduce flood risk, there are

	other approaches to resiliency that may be considered (floodable spaces within the buildings, etc.) that may allow for the buildings to sit at its current location.
Permit Feasibility Assessment	
Federal NEPA Review	Federal. Not required unless federal funding or federal permits are used. NPDES CGP alone does not trigger it. If no federal involvement, NEPA does not apply.
NPDES Construction General Permit	Federal. Likely required (if >1 acre disturbed). Requires SWPPP, eNOI submission, and site compliance with stormwater protections.
Army Corps of Engineers Permits	Federal. Not anticipated unless project changes to include work below Ordinary High Water Mark or fill in wetlands.
MEPA Review	State. MEPA only applies if **both** state funds or permits are involved **and** thresholds are met. Current scope unlikely to trigger MEPA.
Chapter 91 Permitting	State. Not applicable. Morses Pond is not a Great Pond and no work is below the Ordinary High Water Mark.
401 Water Quality Certification	State. Not currently required, unless future design impacts wetlands or water bodies.
Massachusetts Historical Commission	State. Not required unless state or federal funding/permits are involved.
Article 97 Land	State. Site is classified as Article 97 land. Project must maintain recreational use. Continued use as a beach is assumed not to require new Article 97 legislation unless advised otherwise by state officials.
Local Notice of Intent (NOI)	Local. Required under WPA and Wellesley Wetlands Bylaw for work in Bordering Land Subject to Flooding (BLSF) and buffer zones. - Compensatory flood storage is required if fill occurs below 124.2' NAVD88 (base flood elevation). Must match floodwater displacement volume. - 25-foot No Disturb Zone must remain intact. Work in 100-foot buffer zone must preserve habitat; tree removal requires native species replacement or mitigation plan.

Further discussion is included on the following pages per topic area.

1. Zone I Wellhead Protection Area Restrictions:

A portion of the site falls within a Zone I Wellhead Protection Area due to the wellheads located on the adjacent Water Department site. Zone I is defined as "the protective radius required around a public water supply well or wellfield" per 310 CMR 22.02. The protective radius at Morses Pond is shown at 400 feet on the topographic survey.

Under 310 CMR 22.21, the only land uses permitted within Zone I are those that:

a. Directly relate to the public water system (e.g., operations or maintenance of the water supply), or
b. Are demonstrated by the water supplier to have no significant impact on water quality.

All other uses are prohibited within Zone I. To be explicit, this means:

- No underground storage tanks for petroleum products
- No land uses without a clear water-supply purpose or will have no significant adverse impact on water quality

Parking vehicles in Zone I is not expressly prohibited by 310 CMR 22.21, as long as the activity is directly related to the public water system or the water supplier demonstrates it has no significant impact on water quality. However, that comes with important caveats:

- No fueling, repairs, or vehicle maintenance unless it's strictly water-supply-related.
- No uncovered storage of road salt or de-icing chemicals used on parked cars, unless contained in a structure that prevents runoff.
- No large-scale or commercial vehicle parking, junkyards, or automobile graveyards.

In practice, occasional parking of standard vehicles (e.g. for drop off) may be allowable if:

1. It's essential for water system operations, or
2. Properly managed so as not to risk contamination (e.g. parked on impermeable surface, no fluids dripped, no salt storage).

For higher-intensity or commercial parking, the Town will need a demonstration of "no significant impact" and possibly prior MassDEP approval.

References:
- 310 CMR 22.00: DRINKING WATER
- https://www.law.cornell.edu/regulations/massachusetts/310-CMR-22-21

2. ADA Parking and Accessibility

Morses Pond must comply with both local Zoning regulations and both federal ADA standards and the state's Architectural Access Board (AAB) regulations, the latter of which is more stringent.

a. **Wellesley Zoning ByLaws Section 5.17 – "Off Street Parking":** At the local level, Morses Pond is zoned 'Parks, Recreation, and Conservation' in Wellesley's Zoning ByLaws. According to Section 5.17 – Off-Street Parking, this designation has:
   - No on-site parking required.
   - No minimum distance from parking to site/entrance required (a.k.a. no 200' requirement as previously assumed)

b. **Massachusetts AAB Regulations –** According to 521 CMR Section 23.3.1 – "Parking and Passenger Loading Zones":
   - 23.3.2 applies: *"In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility."* (a.k.a. no 200' requirement as previously assumed). There is no specific requirement that accessible parking be located directly beside any single building, such as a bathroom or guardhouse.
   - No accessible spaces are required by MAAB since the number of spaces we will have regardless if we choose to have spaces will be under 15 total.
   - The "drop-off" exception only applies to 23.3.3 "buildings with multiple accessible entrances", so it does not apply to this Project. No 100' to accessible entrance drop off required.
   - Accessible routes must have firm surfaces, compliant slopes, proper signage, and curb cuts.
   - If a bathroom or admin building is a key access point, then the route from parking to that structure must be fully accessible.
   - If amenities are located at different ends of the beach, then accessible spaces must be distributed accordingly, so each facility is served by a compliant route.

c. Emergency vehicle access is still required; the existing roads can be modified to accommodate any of the locations we are discussing.
d. Public toilet rooms shall comply with 521 CMR, and shall be on an accessible route (521 CMR 30.2)

Bottom Line:

The existing parking lot, with modifications, can satisfy the requirements for Public, Staff and ADA parking. Improving the existing condition (i.e. adding parking to the South, paving ADA Parking spots, improving accessible routes, etc.) are **OPTIONS** to be presented to the Town but **do not restrict the building location.** If additional assurance is needed or desired, an ADA self-evaluation or formal review by the Massachusetts Office on Disability could confirm that accessible routes from parking areas properly serve the beach's primary facilities.

References:

- 521 CMR (Architectural Access Board) Section 23.3.1 - Parking and Passenger Loading Zones - https://www.mass.gov/doc/521-cmr-2300-parking-and-passenger-loading-zones-2006-pdf/download
- 521 CMR 30.00 Public Toilet Rooms - https://www.mass.gov/doc/521-cmr-30-public-toilet-rooms/download

- Wellesley Zoning ByLaws, Section 5.*17 – Off Street Parking* - *https://wellesleyma.gov/DocumentCenter/View/566/Section-517-Off-Street-Parking?bidId=*

3. MBTA Commuter Line Adjacencies

The MBTA Zone of Influence (ZOI) includes any construction on, above, adjacent to, or within the operational Right-of-Way of MBTA property, which is the commuter line adjacent to the site in the case of Morses Pond Beach. The ZOI is a 30-foot offset from the property line. The southern access drive falls within the ZOI due to where the property line lands relative to the edge of road. The survey indicates that it is a GIS line and not a property tie down. Noting that a GIS line may differ in location to a property line tie down, it may be prudent to get the boundary lines surveyed in the field to be exactly sure of where they fall.

To do work within the ZOI, a license must be secured, which is achieved through the following process, generally:

1. Pre-Construction Coordination
    a. The Town must initiate contact with MBTA's TOD or Capital Delivery teams during initial planning.
    b. Submit design documents early for inclusion in MBTA reviews.
2. Design & Construction Two-track Review: This process can take up to 12 months.
    a. *Technical fit-check*: Structural, geotechnical, mechanical, electrical, track/ROW implications.
    b. *Operational fit-check*: Safety, drainage, passenger flows, transit accessibility, maintenance access.
    c. Standards reference: Designs must strictly follow MBTA's technical manuals and engineering criteria (structural load, clearances).
3. License Agreement:
    a. Following approval of the construction plans, the MBTA will draft a license agreement for the work to take place. Within the license agreement, indemnification clauses, specific insurance requirements, performance bonds and maintenance warranties are articulated, as necessary. The MBTA requires MBTA-specified coverage and naming MBTA as Additional Insured. The MBTA license agreements often include operational safety measures, including protection plans, coordination with the MBTA and emergency plans.
4. Construction Inspections:
    a. The MBTA will send inspectors to regularly oversee construction activities. halt work if violations are observed, and issue penalties.
    b. As-built drawings and other closeout documents are required by the MBTA to close out the license agreement.

Fees are required for review, licensing and inspections. For inspections, the MBTA requires a force account is set up to be drawn upon for time spent performing inspections.

Reference:

- MBTA Capital Deliver Transit-Oriented Development Group; A Guide for Owners, Developers, and Contractors (ODC'S) April 2018; Section 1-MBTA Review, Authorization, and Access - MBTA-TOD-GUIDLINES-FOR-ODCs-April-2018.pdf

4. Resiliency Considerations

As part of this study, the Town may consider the option to raise the proposed buildings for resiliency purposes, given there was a change from 124 NAVD88 to 124.2 NAVD88 in the FEMA 100-year flood elevation between the 2021 and 2025 Wetland Delineation Report. We used the ASCE 24-24 guidelines to establish an ideal FFE for this study. Based on the Flood Design Class definitions in the ASCE 24-24 guidelines, we determined that Method A can be used to determine the DFE. At Morses Pond Beach:

- The bathhouse Flood Design Class is considered Class 2; Method A should be followed
- Base Flood Elevation (BFE), or 100-year flood elevation = 124.2 NAVD88

Per Method A, DFE = FE_{com} or ($FE_{MRI} + \Delta_{SLC}$) where:

- FE_{com} = Flood elevation established by the community, and
- FE_{MRI} = Flood elevation based on the required minimum Mean Recurrence Interval (MRI) for the flood design class of the building or structure (500-year for Class 2, 750-year for Class 3, 1000-year for Class 4)
- Δ_{SLC} = Relative sea level change which shall not be taken as less than 0

At Morses Pond Beach, this translates to:

- FE_{MRI}, or the 500-year flood elevation from FEMA's FIS Report (also known as the 0.2% annual chance storm) = 125.4 NAVD88
- Δ_{SLC} = 0, since there is no coastal influence at Morses Pond Beach

DFE = $FE_{MRI} + \Delta_{SLC}$
DFE = 125.4 NAVD88 + 0

We recommend 12" is added to the DFE to account for freeboard, **making the ideal proposed FFE 126.4 NAVD88 or above.**

References:

- ASCE 24-24 Flood Resistant Design and Construction (can be supplied upon request)
- FEMA Flood Insurance Study No. 25021CV001E, Volume 1 of 7 - https://wellesleyma.gov/DocumentCenter/View/37434/FIS---25021CV001E---Volume-1-of-7

5. Permit Feasibility Assessment:

A comprehensive discussion on the full range of permitting requirements for the scope of physical improvements is enclosed in the document entitled, "Permit Feasibility Assessment, Morses Pond Beach Area and Bathhouse, Wellesley, Massachusetts," prepared June 2025 by Weston & Sampson. Specific clarifications are noted below:

a. Article 97 - The site sits fully within Article 97 jurisdiction. The previous assumption was that the use of the site is not changing. It operates as a beach now and will continue to in the future. Our Project team continues to operate under this assumption unless told otherwise by either Town Counsel or the Executive Office of Energy and Environmental Affairs.

b. NEPA Applicability (federal) - Under NEPA, environmental review is required when a project involves either federal funding or federal permitting. A notable exception is coverage under the NPDES Construction General Permit, which does not independently trigger NEPA. If a project does not involve federal funds or federal permits, NEPA review is generally not required.

c. MEPA Applicability (state) - For MEPA, a two-part test determines applicability:

1. The project must involve state funding or require a state permit; AND
2. The project must meet or exceed one or more environmental thresholds outlined in the MEPA regulations. Relevant MEPA thresholds for this project may include:
   - Alteration of 500 or more linear feet of inland bank
   - Alteration of ½ acre or more of Bordering Land Subject to Flooding (100-year floodplain)
   - Disposition or change in use of land protected under Article 97 of the Massachusetts Constitution (unless the Secretary grants a waiver under M.G.L. c. 3, § 5A and its implementing regulations). *(Note: Based on our discussions with the Town, this threshold is not expected to be triggered.)*

   Importantly, certain thresholds—such as the wetland-related thresholds noted above—only apply if the project requires a state-level wetlands permit (e.g., 401 Water Quality Certification or a Chapter 91 license). Currently, we anticipate filing only a local Notice of Intent, which does not qualify as a state permit under MEPA. The Article 97 threshold, however, may be triggered based on state funding alone, without a permit requirement.

3. Transportation-Related Thresholds - MEPA regulations include several transportation-related thresholds that may apply depending on the project scope. While the current design is not expected to trigger any of the following, we recommend confirming this as design progresses:

   1. Construction, widening, or maintenance of a roadway or right-of-way that would:

- Alter terrain or bank more than 10 feet from the existing roadway for ½ mile or more (unless necessary for a structure or equipment)
- Remove five or more living public shade trees ≥14 inches DBH
- Eliminate 300 feet or more of stone wall

2. Construction of 300 or more new parking spaces at a single location

If any of these transportation thresholds are met AND state funding is involved, MEPA review could be triggered. In summary, State funding alone does not automatically trigger MEPA review. The project must also meet or exceed an applicable threshold and, in some cases, require a state permit.

Enclosed:

- Morses Pond Beach & Bathhouse Permit Feasibility Assessment, June 2025

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Permit Feasibility Assessment

June 2025

MORSES POND BEACH AREA AND BATHHOUSE

WELLESLEY, MASSACHUSETTS

PREPARED FOR:
Town of Wellesley
Facilities Management Department

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1.0 INTRODUCTION

This feasibility study assesses the environmental permitting that is anticipated to be required for the Morses Pond Beach and Bathhouse Project in Wellesley, Massachusetts. The Town of Wellesley is planning to redevelop the Morses Pond beach area by constructing a new bathhouse and beach operations building, improving site accessibility, circulation, and recreational amenities. The project is anticipated to include regrading to meet ADA standards, evaluation and potential modification of pedestrian circulation paths and parking access, stormwater management improvements, and restoration or enhancement with native plantings.

The goal of the proposed project is to take a collaborative approach amongst all stakeholders to develop an ADA compliant outcome that meets the programmatic needs for recreation, environmental impact needs for Wellesley Natural Resource Commission[1] (NRC), operational needs for recreation staff and customer experience needs for patrons and the Wellesley community at large, while at the same time enhancing the overall natural and aesthetic qualities of the site with a design that is simple, safety oriented and sustainable, and in keeping with the historical, environmental, and social site character.

1.1 Existing Site Conditions

The proposed project is located at Morses Pond Beach located near Turner Road (follow Morses Pond Access Road) in Wellesley, MA. The property includes existing paved areas, a building, recreational walking paths, and undeveloped woodlands. See Figure 1 below for Locus Map or Attachment A, Figure 2.

[1] https://www.wellesleyma.gov/418/Natural-Resources-Commission-NRC

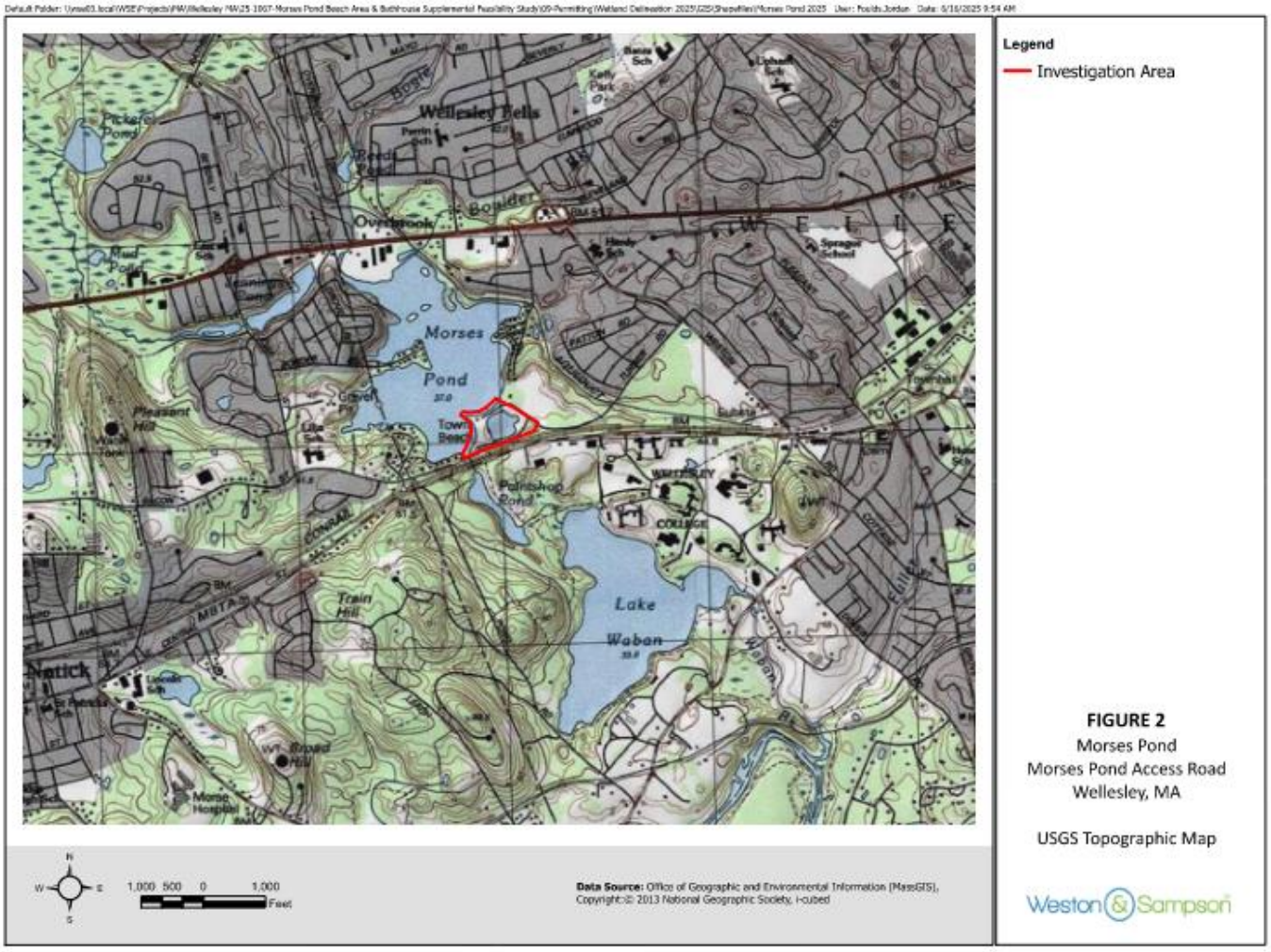

Figure 1: USGS Topographic Map

On June 12th, 2025, a wetland delineation was performed by Weston & Sampson employees trained in the wetland delineation process using the Massachusetts Department of Environmental Protection (MassDEP) and the U.S. Army Corps of Engineers methodology. Within the vicinity of the anticipated limit of work delineated wetland resources include an Isolated Vegetated Wetland and Lake Bank (see Figure 2 on the next page or Attachment A, Figure 1).

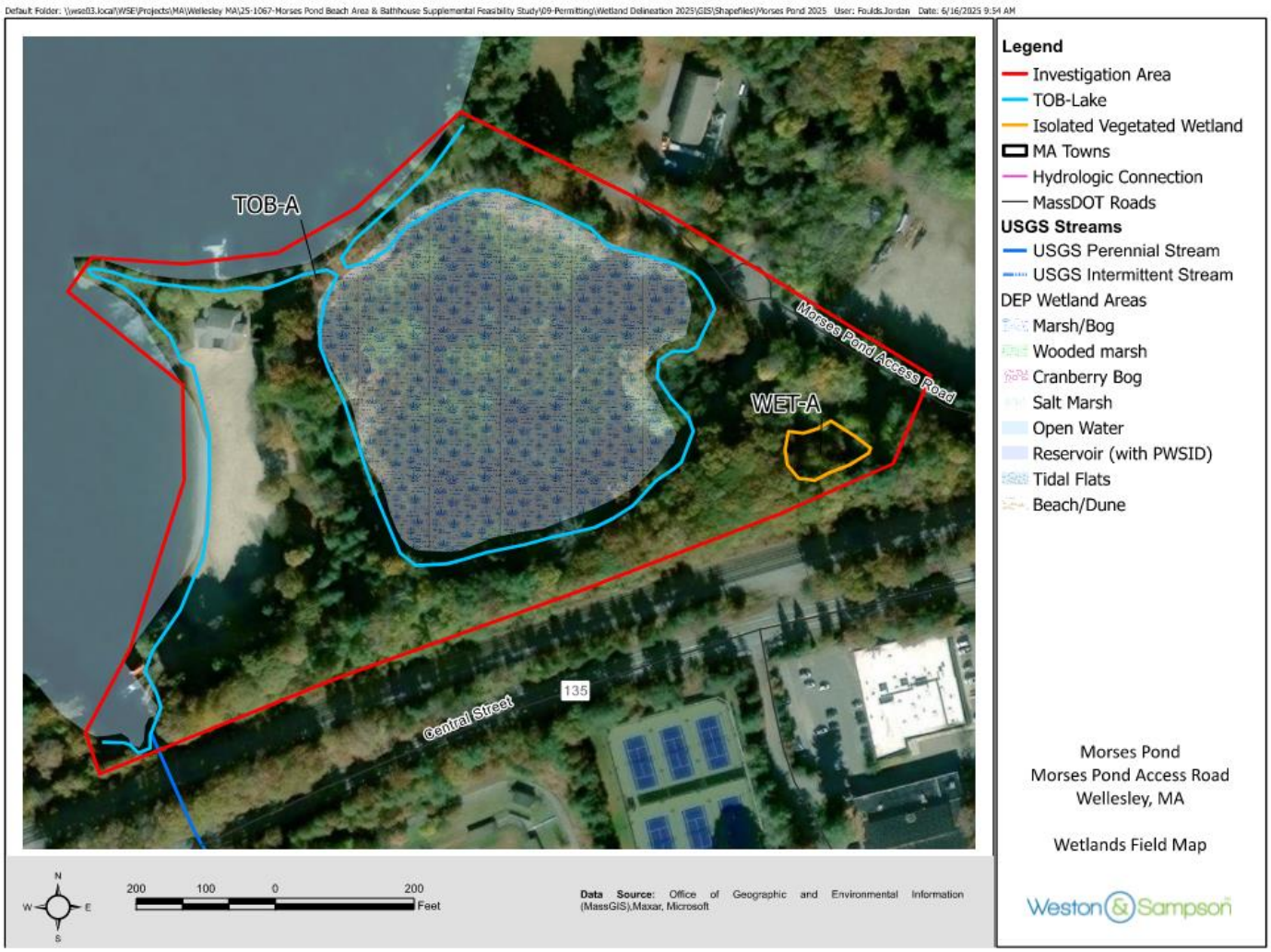

Figure 2: Wetlands Field Map

FEMA Flood Insurance Rate Maps (FIRM) were created online from the FEMA website to determine if there is a 100-year flood zone at the site. Based on current FEMA flood maps the investigation area is located within a Zone AE 100-year flood zone with a base flood elevation of 124 feet NAVD88. However, there is a preliminary FIRM map available that will be active as of July 8, 2025. The area is still shown as a Zone AE but with the base flood elevation to be updated to elevation 124.2 feet NAVD88. See Figure 3 on the next page or Attachment A, Figure 4 for FIRM map where the preliminary FIRM was utilized. The 100-year flood zone is jurisdictional under the Massachusetts Wetlands Protection Act (WPA) (310 CMR 10.00) as Bordering Land Subject to Flooding (BLSF).

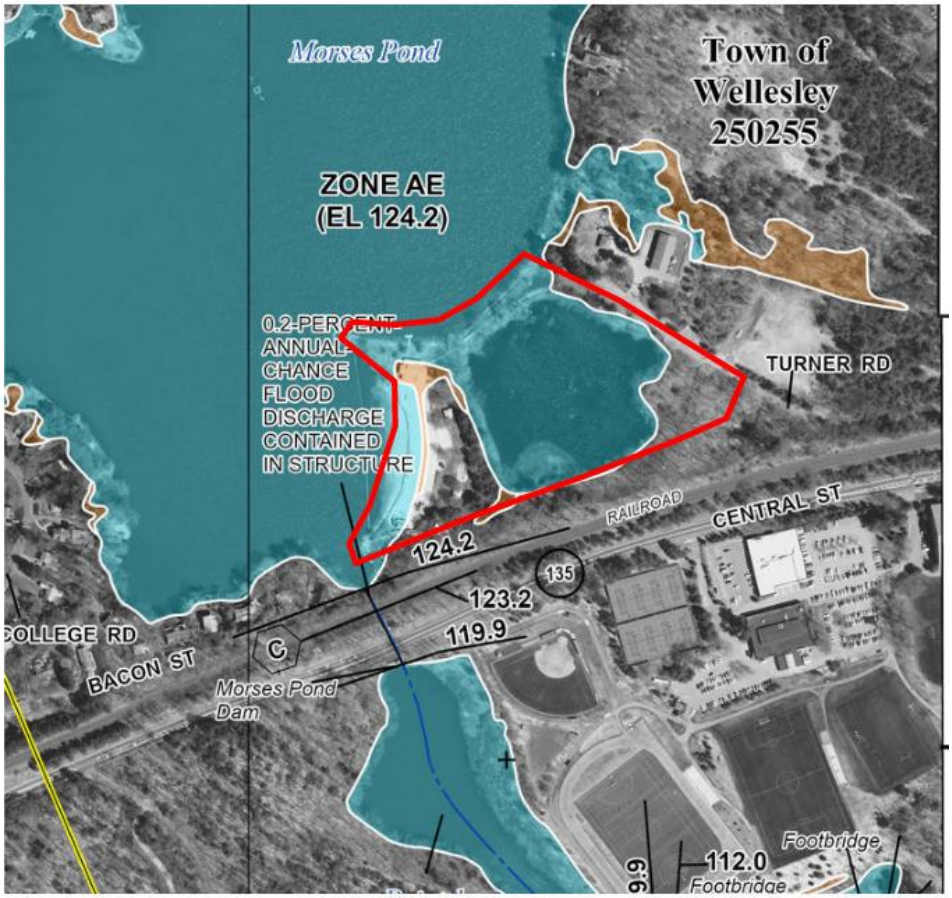

Figure 3: FEMA FIRM Map

It is important to note that, although the WPA does not protect a buffer zone off of BLSF, the Town of Wellesley Wetlands Protection Bylaw protects a 200-foot buffer zone off of BLSF. At this site, that would be a 200-foot buffer zone off of elevation 124.2' NAVD88 (the base flood elevation).

Inland Bank associated with Morses Pond and Ice House Pond additionally has a 100-foot buffer zone that is protected under both the WPA and the Wellesley Wetlands Protection Bylaw. The bylaw also implements a 25-foot No Disturbance Zone off of Bank.

The Isolated Vegetated Wetland, while not jurisdictional under the WPA, is jurisdictional under the Wellesley Wetlands Protection Bylaw, as the bylaw protects isolated wetlands that are greater than 2,500 square feet in size. The bylaw also protects a 25-foot No Disturbance Zone off of Isolated Vegetated Wetlands, as well as a 100-foot buffer zone.

1.2 Environmental Receptors Mapping

Weston & Sampson created environmental resources maps (see Figure 4 below and in Attachment A) of the site to determine the presence of other protected areas. The data source of these map layers was the Massachusetts Geographic Information System (MassGIS). These areas included:

- NHESP Priority Habitats of Rare Species
- NHESP Estimated Habitats of Rare Wildlife
- NHESP Certified and Potential Vernal Pools
- Areas of Critical Environmental Concern (ACEC)
- Outstanding Resource Waters (ORW)
- Coldwater Fisheries
- Article 97 Land
- Massachusetts Historical Commission (MHC) Inventory

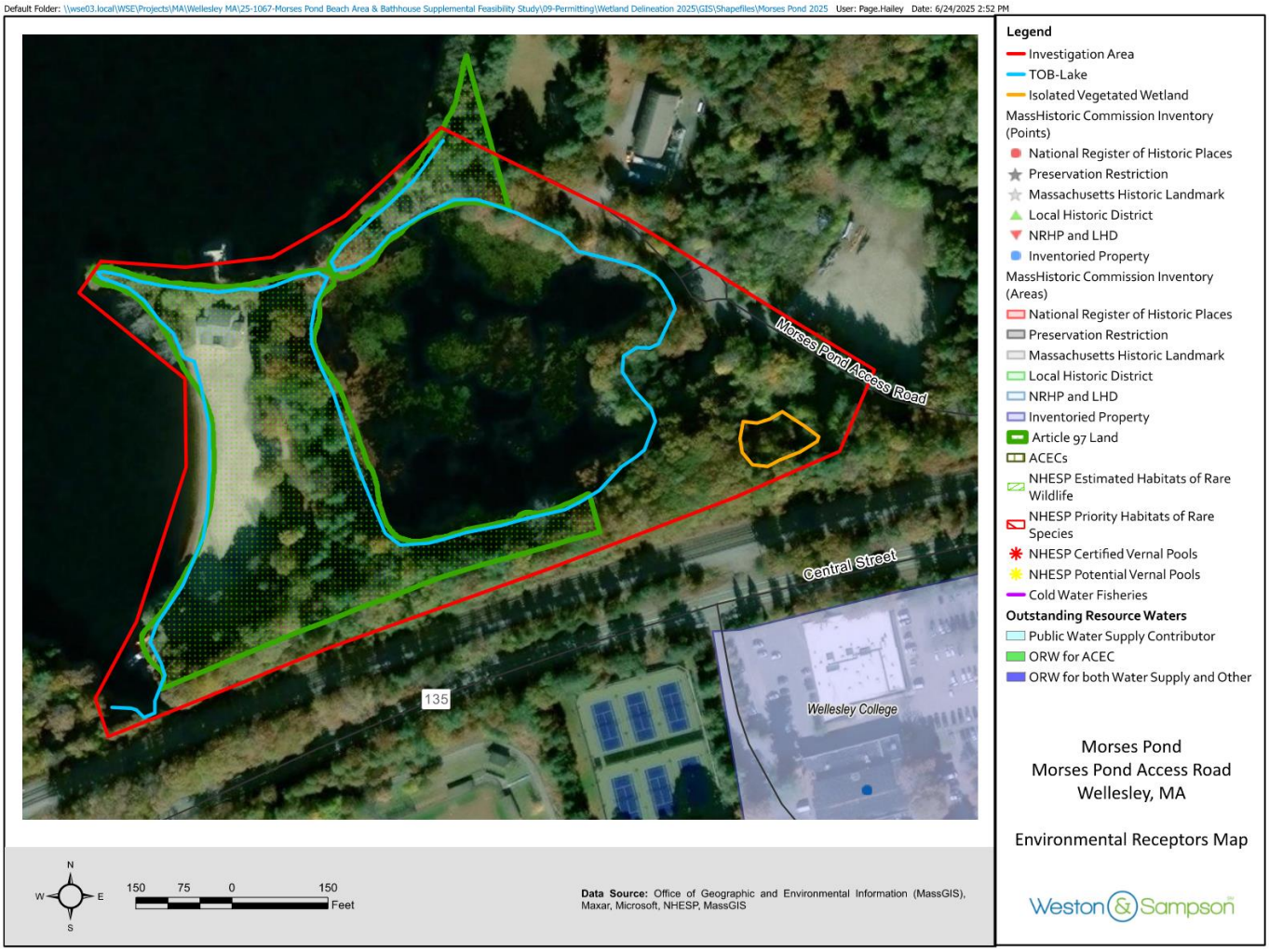

Figure 4: Environmental Receptors Map

Based on MassGIS information, the western portion of the investigation area along Morses Pond Beach is located within Article 97 Land (protected open space) owned and managed by the Town of Wellesley. The site is not located within NHESP Priority Habitats of Rare Species, NHESP Estimated Habits of Rare Wildlife, Areas of Critical Environmental Concern, Outstanding Resource Waters, or Coldwater Fisheries. Additionally, no Massachusetts Historical Commission inventory areas or sites have been identified on the site. Additionally, the site does not contain any mapped NHESP certified or potential vernal pools.

2.0 REGULATORY FRAMEWORK

Included below is a summary of the various federal, state and local permits/authorizations that may be required for implementation of the project. While several potential designs were assessed, all of them primarily involve work within the beach area. For the purposes of this permit assessment, we assume that the project will not result in any impacts to waterbodies, vegetated wetlands, or bank, and that impacts will be limited to Bordering Land Subject to Flooding (the 100-year floodplain), the 100-foot buffer zone, and potentially the local 25-foot No Disturb Zone. Note that concepts are still being developed at this time; therefore, this assessment will need to be updated once the conceptual design plans have been completed.

Additionally, at this conceptual level, only a precursory assessment of permitting requirements can be made through the application of general assumptions. The determination of applicable environmental permits and approvals is dependent on the type and magnitude of proposed impacts to protected environmental resources as well as use(s) and type(s) of activity/activities occurring within regulated waterways. Accordingly, actual permitting requirements will need to be further evaluated/refined with the advancement of design as part of subsequent project phase(s) once a strategic pathway for next steps has been developed with public and private property owners.

Please note that this section includes only anticipated environmental permitting needs and does not include other local permits that may be required, including but not limited to Planning Board and Zoning Board approvals.

2.1 Federal Permits and Approvals

2.1.1 National Environmental Policy Act (NEPA) Review

The National Environmental Policy Act (NEPA) requires federal agencies to assess the environmental impacts of certain proposed actions. The Act requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. A project requires a NEPA review when it involves federal action, such as federal findings, a federal permit, or working on federal lands.

There are three levels of NEPA review, including a categorical exclusion (CATEX), an Environmental Assessment (EA) or an Environmental Impact State (EIS). The level of permitting required would need to be confirmed with the lead federal agency once the lead agency is determined (if there will be federal funding).

For the purposes of this feasibility assessment, we assume that the project will not obtain any federal funding sources and will not require any federal permits, and therefore a NEPA review will not be required. However, if it is determined that federal funding or a federal permit is required, NEPA review would likely be required.

2.1.2 NPDES Construction General Permit

If the project will result in greater than one acre of earth disturbance, coverage under the U.S. Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) would be required.

The CGP is intended to protect water quality by regulating stormwater discharges from construction sites. To obtain coverage, the project proponent must prepare a Stormwater Pollution Prevention Plan (SWPPP) that outlines erosion and sediment control measures, pollution prevention practices, and site-specific stormwater management strategies. In addition, an electronic Notice of Intent (eNOI) must be filed with EPA through their NPDES eReporting Tool (NeT) at least 14 days prior to the start of construction. The SWPPP must be implemented and maintained throughout construction, and a Notice of Termination (NOT) must be filed once final stabilization is achieved.

If coverage under the CGP is required, coverage should be obtained at least 14 days prior to construction. CGP review takes approximately 14 days.

It is anticipated that the project may result in greater than one acre of land disturbance. If the project will result in greater than one acre of land disturbance, coverage under the NPDES CGP, along with development of a SWPPP, will be required.

2.1.3 U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers (USACE) regulates construction and other work in navigable waterways under Section 10 of the Rivers and Harbors Act of 1899, and has authority over the discharge of dredged or fill material into "waters of the United States," including wetlands, under Section 404 of the Clean Water Act (CWA). Activities regulated under these authorities include fill for development, water resource projects, infrastructure improvements, and mining operations. Projects that propose such work must receive federal authorization from USACE prior to construction.

Federal authorization through the ACOE can be obtained through an Individual Permit (IP) or under the MA State General Permit (GP). The MA GP identifies specific categories of activities with allowable thresholds to help streamline the federal review process through either a Self-Verification Notification (SVN) or Pre-Construction Notification (PCN). In the state of Massachusetts, the GP is re-issued on a periodic five (5) year basis. ACOE reviews depending on the category of the permit (SVN, PCN, or IP) can take anywhere between 4-6+ months.

It is assumed that Section 10 authorization will not be required, as all work is anticipated to occur above the Ordinary High Water Mark (OHWM) of navigable waters, and no direct work is proposed within navigable channels. Additionally, authorization under Section 404 of the Clean Water Act is not currently anticipated, as no discharge of dredged or fill material into wetlands or other waters of the U.S. is proposed.

However, if the project design changes and will result in impacts below the OHWM of Ice House Pond or Morses Pond, then authorization under Section 404 of the Clean Water Act would be required.

2.2 State Permits and Approvals

2.2.1 Massachusetts Environmental Policy Act (MEPA) Review

The purpose of MEPA and 301 CMR 11.00 is to provide meaningful opportunities for public review of the potential environmental impacts of a project for which a permit is required from an agency of the Commonwealth, and to assist agencies of the Commonwealth in using all feasible means to avoid damage to the environment or, to the extent damage to the environment cannot be avoided, to minimize and mitigate damage to the environment to the maximum extent practicable. MEPA's review is intended to inform the participating agencies of the project, to maximize consistency between agency actions, and to facilitate coordination of all environmental and development review and permitting processes of the Commonwealth. The MEPA process provides an opportunity for the project proponent to identify the required agency actions and to describe and analyze how the project will comply with applicable regulatory standards and requirements. Through review of the MEPA documents, each participating agency can comment on aspects of the project or issues regarding its agency action that require additional description or analysis.

There are twelve MEPA review threshold categories contained in the Act covering the following topics of Land, State Listed Species, Wetlands, Waterways and Tidelands, Water, Wastewater, Transportation, Energy, Air, Solid and Hazardous Waste, Historical and Archaeological Resources, Areas of Critical Concern, and Regulations. In addition to triggering a threshold, a state action (i.e., state funding or state permitting) is necessary to trigger MEPA review. For this project, no state permits are anticipated to be required. Funding sources for the project have not been fully determined at this time. However, if the project requires state funding, and if it triggers one of the below review thresholds, then MEPA review would be required.

- 301 CMR 11.03(1)(b)3. - Disposition or change in use of land or an interest in land subject to Article 97 of the Amendments to the Constitution of the Commonwealth, unless the Secretary waives or modifies the replacement land requirement pursuant to M.G.L. c. 3, § 5A and its implementing regulations.
- 301 CMR 11.03(3)(b)(1)b.- Alteration of 500 or more linear feet of bank along a fish run or inland bank
- 301 CMR 11.03(3)(b)1f. - Alteration of ½ or more acres of any other wetlands (includes Bordering Land Subject to Flooding)

At this time, none of these thresholds are anticipated to be triggered; however, they are included here for transparency and to support ongoing coordination should project details change.

If MEPA review is required, the project would require submittal of both an Environmental Notification Form (ENF) and a mandatory Environmental Impact Report (EIR) due to the site being located within 1 mile of an Environmental Justice (EJ) community. The Town could file an Expanded ENF and request that the Secretary allow a Single EIR. This permitting path usually can take between 6-8+ months to complete. There is a chance that MEPA would request both a Draft and Final EIR, which would extend the review timeline to between 8-12+ months.

MEPA review typically begins around 50% design, but this can vary depending on the project's timeline and the other permits needed.

Based on the current conceptual design plans for the project, the project is not anticipated to require review under the Massachusetts Environmental Policy Act (MEPA); however, a discussion has been included in the event that the project does require state funding and exceeds one of the MEPA review thresholds described above.

2.2.2 MassDEP Waterways, Chapter 91 Permitting

The "Public Waterfront Act" or Massachusetts General Law Chapter 91 (Chapter 91) dates back to 1866 and serves to provide the public with access to tidelands and waterways and to protect public interests associated with those resources. Chapter 91 takes jurisdiction in four general areas: flowed tidelands, filled tidelands, great ponds, and non-tidal navigable rivers and streams on which public funds have been expended either upstream or downstream within the river basin. For inland rivers and streams this jurisdiction extends up to the Ordinary High-Water Mark. Per [33 CFR 328.3(d)] OHW is defined as "with respect to non-tidal waters, is the line on shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed upon the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas."

Chapter 91 licenses can take 12+ months to complete whereas a Chapter 91 permit may have a slightly shorter review period. If there are any existing licenses on the site, there is potential a minor modification submission may meet Chapter 91 requirements, and this review tends to be a 1+ month review. Consultation with MassDEP Waterways is advised to determine the best permitting pathways, if applicable.

It has been confirmed on the Massachusetts Great Pond List[2] that Morses Pond is not identified as a Great Pond. Additionally, no work is anticipated to occur below the OHWM, therefore it is anticipated that no Chapter 91 permitting is required.

2.2.3 MassDEP, 401 Water Quality Certification

Projects in Massachusetts involving the discharge of dredged or fill material, dredging, or dredged material disposal activities in waters of the United States, which require federal licenses or permits are subject to 314 CMR 9.00. 314 CMR 9.07 also applies to any dredging project and the management of dredged material within the marine boundaries and at upland locations within the Commonwealth, respectively. A 401 WQC may also be required for a 401 WQC for major or minor excavation/fill activities that occur below MHW. The purpose of the 401 Water Quality Certification (WQC) is to ensure that proposed discharges of dredged or fill material, dredging and dredged material disposal in the Waters of the United States within the Commonwealth comply with the Surface Water Quality Standards and other appropriate requirements of the state law.

There are a number of thresholds that can trigger the need for 401 review, including but not limited to:

- Any activity that results in a discharge of dredged material, dredging, or dredged material disposal greater than 100 cubic yards to waters subject to regulation by the ACOE, Federal Energy Regulatory Commission or other federal agency;

[2] https://www.mass.gov/doc/massachusetts-great-ponds-list/download

- Any activity resulting in any discharge of dredged or fill material to any Outstanding Resource Water (ORW).

- Any activity resulting in the cumulative loss of more than 5,000 square feet (SF) of bordering and isolated vegetated wetland and/or land under water/ocean, except for routine maintenance projects meeting as defined in accordance with 314 CMR 9.04(5) or a loss of any amount of vegetated wetland or land under water/ocean involving outstanding resource waters, rare species in an isolated vegetated wetland, salt marsh, an individual Section 404 USACE permit, or activities where MassDEP invokes discretionary authority pursuant to 314 CMR 9.04(11) to require an application for an individual water quality certification.

- Any activity resulting in a cumulative loss of up to 5,000 SF of bordering and isolated vegetated wetland and/or land under water/ocean involving activities exempt under the WPA, subject to a Section 404 ACOE permit and results in any discharge of dredged or fill material to bordering vegetated wetlands or land under water/ocean; any activity subject to the provisions of 314 CMR 9.04(13) or a cumulative loss of more than 5,000 SF of vegetated wetland or land under water/ocean involving routine maintenance as defined in accordance with 314 CMR 9.04(5).

401 WQC reviews generally take 4-6+ months to complete.

The project is not anticipated to require a 401 WQC since no impacts to wetlands or waterways are proposed, and all work is anticipated to occur above the Ordinary High Water (OHW) line.

However, if the project design changes and will result in impacts below the OHWM of Ice House Pond or Morses Pond, or to the Isolated Vegetated Wetland, then authorization under Section 401 of the Clean Water Act may be required.

2.2.4 Massachusetts Historical Commission, Project Notification Form

The Massachusetts Historical Commission (MHC) reviews new construction, renovation, or demolition projects that require funding, license, permit, or approval from any state or federal governmental agency. MHC, as the office of the State Historic Preservation Officer (SHPO), reviews any projects that require funding, licenses, permits, or approvals from federal agencies, pursuant to Section 106 of the National Historic Preservation Act. Section 106 requires federal agencies to consider the effects of their actions on historic properties, and to take into account comments of consulting parties and the public prior to funding, licensing, permitting, or approving projects. MHC PNF reviews usually take 1+ month to complete.

Based upon the assumption that there is no federal or state permitting required for the proposed project, an MHC review is not anticipated to be required. If the project ends up requiring state or federal funding or a state or federal permit, MHC review would be required.

2.2.5 Article 97 Land

Per the Executive Office of Environmental Affairs (EEA) Article 97 Land Disposition Policy, it is the policy of EOEA and its agencies to protect, preserve and enhance all open space areas covered by Article 97 of the Article of Amendment to the Constitution of the Commonwealth of Massachusetts. Accordingly, as a general rule, EOEA and its agencies shall not sell, transfer, lease, relinquish, release, alienate, or

change the control or use of any right or interest of the Commonwealth in and to Article 97 land. The goal of this policy is to ensure no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions.

An Article 97 land disposition is defined as a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change.

This proposed project includes work on land classified as Article 97 land (see Figure 4 in Section 1.2 of this report, or Attachment A - Figure 4). According to MassGIS the land is identified as "Morses Pond Beach" and this land is owned and controlled by the Town of Wellesley NRC and the primary purpose is for recreation.

Further consultation is required with the Town of Wellsley's Legal Council to confirm if an Article 97 filing may be needed. At this time there is no set regulatory timeline for this review process.

2.3 Local Permits and Approvals

2.3.1 Notice of Intent

The Massachusetts Wetlands Protection Act (MGL c.131 § 40) (WPA) and implementing regulations (310 CMR 10.00) is a state statute administered at the municipal local level. The site described above is anticipated to require to the submission of a Notice of Intent (NOI) application to the local Conservation Commission (Wellesley Wetlands Protection Committee[3]) for work in jurisdictional areas regulated under the WPA and associated local bylaws which at a minimum are anticipated to include Bordering Land Subject to Flooding, and/or the 100-foot buffer zone along with other restricted buffer zones defined under the local bylaw.

Currently, the Town of Wellsley has a Wetlands Protection Bylaw/Regulations (Article 44), as further described below in Section 1.1.1. The NOI application must express compliance with performance standards in the WPA for BLSF (310 CMR 10.57 (4) (a)1-3) and any additional performance standard outlined in the local bylaw (see section 1.1.1).

Additionally, per 310 CMR 10.57, if 10% of the land in BLSF on a single lot or 5,000 square feet (whichever is less) will be impacted by a project, a Wildlife Habitat Evaluation should be conducted. Depending on the determination of final impact areas on site it should be determined if a Simplified or Detailed Wildlife Habitat Evaluation will be required under 310 CMR 10.60. The Wildlife Habitat Evaluation is typically included as an attachment to the NOI.

NOI reviews typically take 2-3+ months to complete dependent on the scope of work and additional information required by the local Conservation Commission.

[3] https://www.wellesleyma.gov/421/Wetlands-Protection-Committee

1.1.1. Wellesley Wetlands Bylaw and Regulations

The Wellesley Wetlands Protection Committee (WPC) (often referred to as the Conservation Commission in other towns) is a 5-member board of volunteers who are appointed by Wellesley's Natural Resources Commission (NRC). The NRC, having the powers and duties of a Conservation Commission, has delegated to the Wetlands Protection Committee the power and authority to administer and enforce the provisions of the Massachusetts Wetlands Protection Act (MGL Ch. 131 §40) and the Wellesley Wetlands Protection Bylaw (Article 44).

The Wellesley Wetlands Protection Bylaw/Regulations (Article 44) place additional performance standards on the resource areas that likely will be impacted as a part of this project including Bordering Land Subject to Flooding (Section 2.7 (4) (a) 1-7) and Buffer Zones (Section 2.5 (4) (a) 1-8), including their local 25-foot No Disturbance Zone and 100-foot Buffer Zone. It is to be noted per Article 44, additional performance standards are placed on Isolated Vegetated Wetlands (Section 2.4 (4) (a) and (b) 1-4) and Bank (Section 2.3 (4) (a-e)) (including Lake Bank), however no alterations to these resource areas are anticipated.

The Wellesley Wetlands Protection Bylaw/Regulations also places a 200-foot buffer zone on Bordering Land Subject to Flooding, however, the assumption has been made based on the current concept that proposed work is occurring only within BLSF and not in the surrounding buffer.

Although the WPA does not place Wildlife Habitat Evaluation requirements on Buffer Zone the Wellesley Wetlands Protection Bylaw/Regulations contains the requirement to determine if wildlife habitat functions may be altered as a part of the proposed project. Per Article 44 Section 2.4 (4)(a) an activity or activities on a single lot that cumulatively alters up to 10% or 5,000 square feet, whichever is less, of land in this resource area found to be significant to the protection of wildlife habitat per Section 2.5(1)(a) (i.e. Buffer Zones), shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond this threshold may be permitted if they will not impair the capacity of the Buffer Zone to preserve or protect important wildlife habitat functions in accordance with the wildlife habitat assessment procedure and mitigation of altered habitat requirements contained in Section 2.10.

Prior to the formal NOI filing, consultation with the Wellesley WPC is recommended as design progresses to determine permitting requirements

3.0 MITIGATION

For permanent impact to resource areas under the WPA and the Wellesley Wetlands Protection Bylaw/Regulations, mitigation will likely be required in the form of a compensatory flood storage mitigation area and restoration of the local buffer zone areas (25-foot No Disturbance Zone and 100-foot Buffer Zone).

3.1 Bordering Land Subject to Flooding – Compensatory Flood Storage

If the project results in fill below the base flood elevation (124.2' NAV 88), compensatory flood storage will need to be provided in accordance with Article 44, Section 2.7(4)(a) and 310 CMR 10.57(4)(a). Compensatory storage shall mean a volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, that would be displaced by the proposed project.

3.2 Buffer Zone

Per the Wellesley Wetlands Protection Bylaw/Regulations Article 44, 2.5 (4)(a), no activities in the 25-foot No Disturbance Zone are allowable, and any work proposed within the Buffer Zone shall be designed to preserve a minimum of 25 feet of undisturbed natural vegetation and soil adjacent to the limit of water bodies and waterways, banks, and vegetated wetlands.

Additionally, work within the Buffer Zone that does not meet the wildlife habitat assessment threshold (Article 44, Section 2.5 (4)(a)2) that results in the removal of a tree or trees (5 inches Diameter at Breast Height or larger) within the Buffer Zone shall require the planting of one replacement tree for each tree removed. Replacement tree(s) should be a native species, have a caliper of at least 1.5 inches, be located to optimize the contribution to the Bylaw interests and values, and be monitored for two growing seasons after planting. Alternatively, the applicant may propose a functionally equivalent mitigation plan to the above replacement tree(s) that may include native trees, shrubs, and ground cover and/or invasive species removal with a proposed monitoring plan that serves to benefit the Bylaw interests and values of the Buffer Zone.

Attachment A

Project Maps

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Data Source: Office of Geographic and Environmental Information (MassGIS),Maxar, Microsoft

Legend

- Investigation Area
- TOB-Lake
- Isolated Vegetated Wetland
- MA Towns
- Hydrologic Connection
- MassDOT Roads

USGS Streams

- USGS Perennial Stream
- USGS Intermittent Stream

DEP Wetland Areas

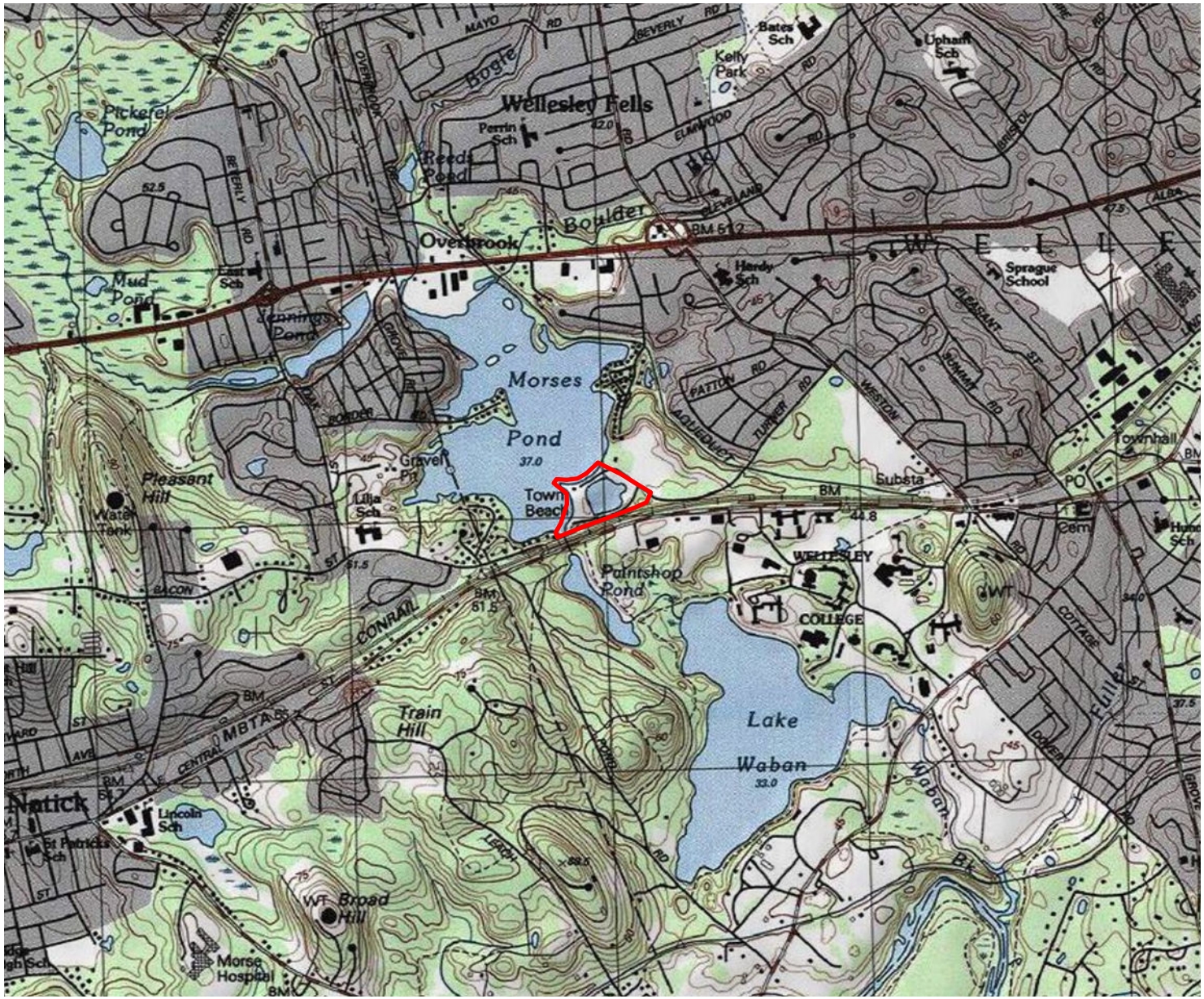
- Marsh/Bog
- Wooded marsh
- Cranberry Bog
- Salt Marsh
- Open Water
- Reservoir (with PWSID)
- Tidal Flats
- Beach/Dune

FIGURE 1

Morses Pond
Morses Pond Access Road
Wellesley, MA

Wetlands Field Map

Weston & Sampson



Legend

Investigation Area

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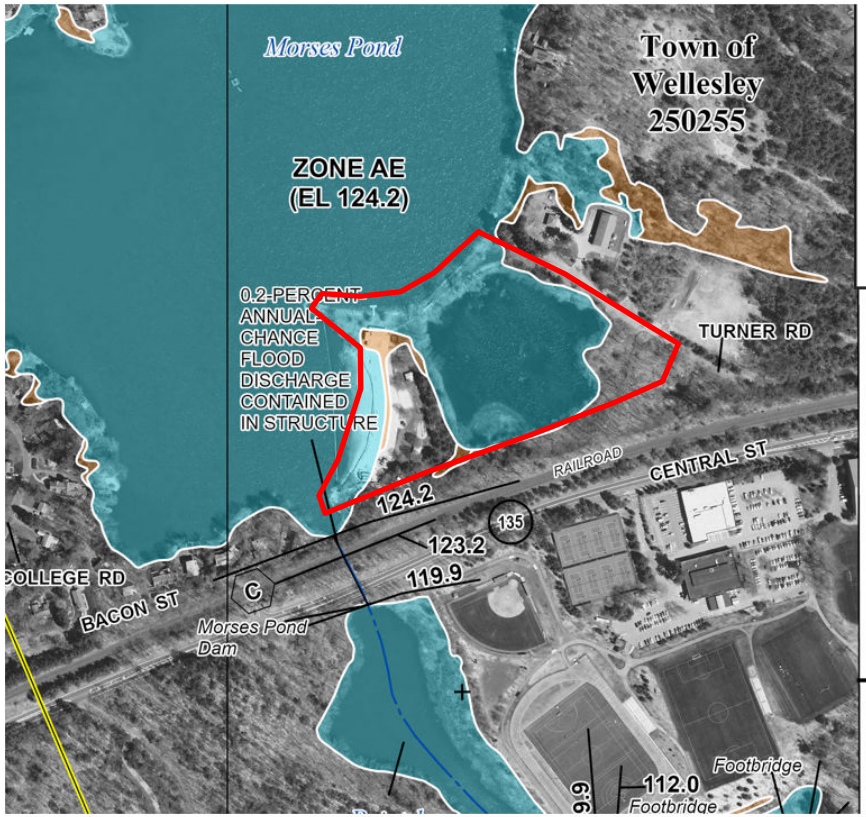
Data Source: Office of Geographic and Environmental Information (MassGIS), Copyright:© 2013 National Geographic Society, i-cubed

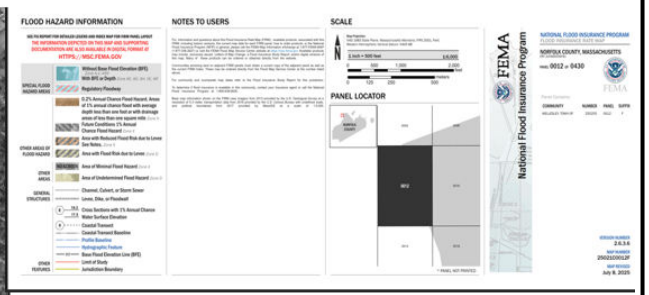
FIGURE 2

Morses Pond
Morses Pond Access Road
Wellesley, MA

USGS Topographic Map

Weston & Sampson





Legend

Investigation Area

FIGURE 3

Morses Pond
Morses Pond Access Road
Wellesley, MA

FEMA Map

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Data Source: FEMA, USGS National Map 2023

Weston & Sampson

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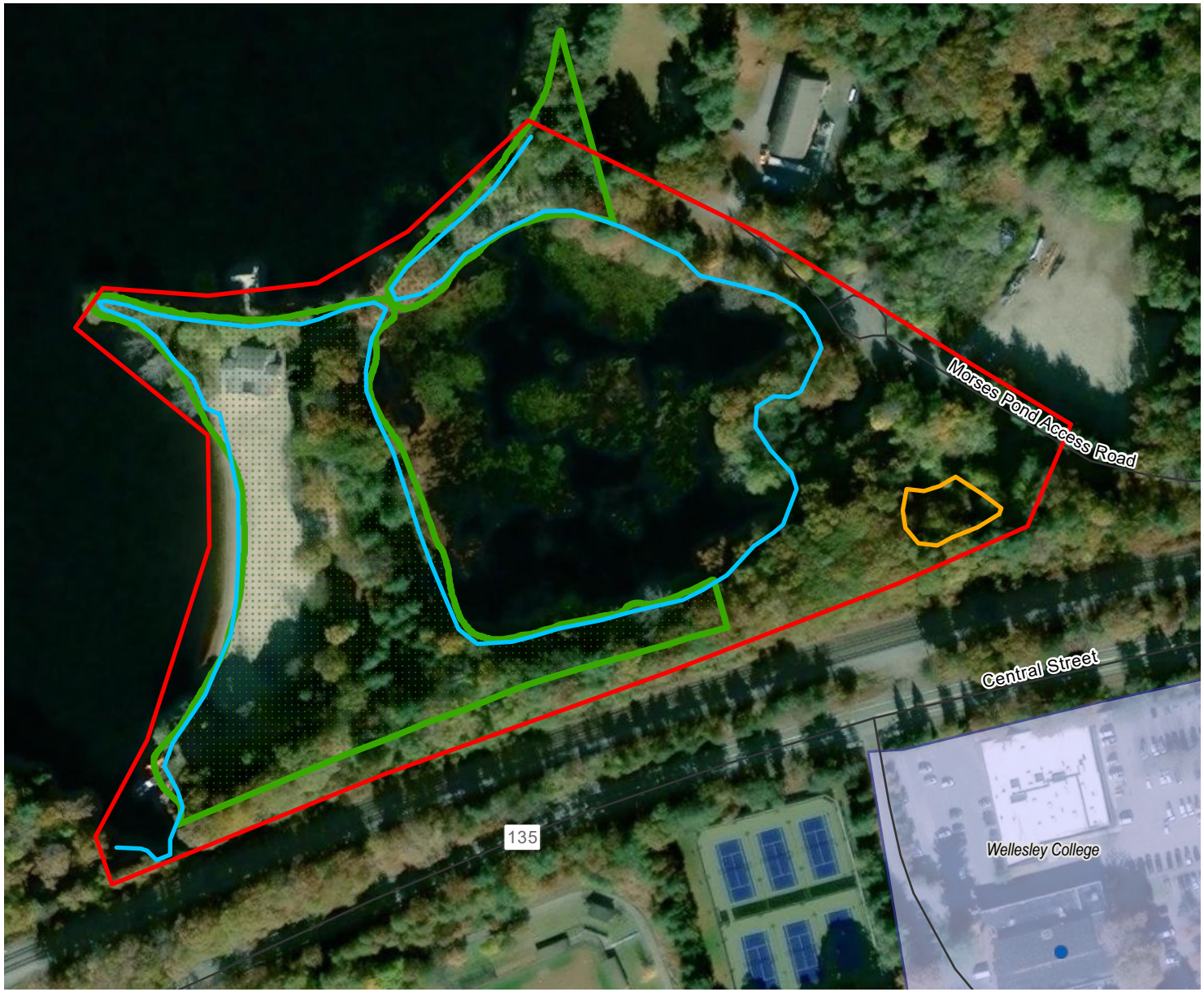

Legend

- Investigation Area
- TOB-Lake
- Isolated Vegetated Wetland

MassHistoric Commission Inventory (Points)

- National Register of Historic Places
- Preservation Restriction
- Massachusetts Historic Landmark
- Local Historic District
- NRHP and LHD
- Inventoried Property

MassHistoric Commission Inventory (Areas)

- National Register of Historic Places
- Preservation Restriction
- Massachusetts Historic Landmark
- Local Historic District
- NRHP and LHD
- Inventoried Property
- Article 97 Land
- ACECs
- NHESP Estimated Habitats of Rare Wildlife
- NHESP Priority Habitats of Rare Species
- NHESP Certified Vernal Pools
- NHESP Potential Vernal Pools
- Cold Water Fisheries

Outstanding Resource Waters

- Public Water Supply Contributor
- ORW for ACEC
- ORW for both Water Supply and Other

N W E S

150 75 0 150 Feet

Data Source: Office of Geographic and Environmental Information (MassGIS), Maxar, Microsoft, NHESP, MassGIS

FIGURE 4

Morses Pond
Morses Pond Access Road
Wellesley, MA

Environmental Receptors Map

Weston & Sampson

Attachment B

Concept Plans (Forthcoming)