



Town of Wallingford, Connecticut

JAMES SEICHTER
CHAIRMAN-PLANNING & ZONING COMMISSION

KACIE A. HAND, A.I.C.P.
TOWN PLANNER

WALLINGFORD TOWN HALL
45 SOUTH MAIN STREET
WALLINGFORD, CT 06492
TELEPHONE (203) 294-2090
FAX (203) 294-2095

NOTICE OF VIOLATION

CERTIFIED LETTER #0000 2654 9840

May 28, 2020

INRSJ, LLC
27 Musket Drive
North Haven, CT 06473

Re: 950 South Colony Road
Wallingford, CT

Dear Gentlemen:

As you are aware, the subject property is in the Floodplain and therefore subject to Section 6.5 of the Wallingford Zoning Regulations regarding same. The filling of floodways requires permitting, including compensatory storage requirements. Per referral from Environmental Planner, Erin O'Hare, you are in violation of the Wallingford Zoning Regulations.

You are hereby ordered to correct these violations within 30 days from receipt of this notice.

Failure to do so will result in the issuance of a Cease and Desist Order; if such an action is taken and you fail to comply, the Town may consider legal action, including seeking a court ordered injunction to compel correction of the violation, and fines of up to \$100.00 dollars per day for each day such violations continue, and/or a one-time civil penalty of \$2,500.00.

Should you have any questions or wish to discuss this matter further, please call this office at 203-294-2090.

Regards,


Amy B. Torre
Zoning Enforcement Officer/Land Use Specialist

Cc: Erin O'Hare, Environmental Planner
Tom Talbot, Planner

RECEIVED

MAY 28 2020

WLFD INLAND/WETLAND



Town of Wallingford, Connecticut


INLAND WETLANDS & WATERCOURSES COMMISSION

JAMES E. VITALI
CHAIRMAN

ERIN O'HARE
ENVIRONMENTAL AND NATURAL RESOURCES PLANNER

WALLINGFORD TOWN HALL
45 SOUTH MAIN STREET
WALLINGFORD, CT 06492
TELEPHONE (203) 294-2093
FAX (203) 294-2095

MEMORANDUM

To: IWWC
From: Erin O'Hare, Environmental Planner 
Date: May 28, 2020

Re: 950 South Colony Road – 1NRSJ, LLC –carwash facility – (filling)

ENVIRONMENTAL PLANNER'S REPORT

Please refer to previous EPR dated March 26, 2020, forwarded in packet.

Status

- May 15: Fourth site investigation conducted with Acting Town Planner & Flood Manager, Tom Talbot, indicated:
 - Owner had removed much of the trash (two couches gone) but much remains at the base of the slope.
 - All fill appears to remain. Fill remains around tree trunks.
 - Surface conditions were observed to look different perhaps as a result of storms eroding away material – more dirt was observed in fill material, less dominated by rocks.
 - Photos taken (see attached)

Owner was requested to remove fill but indicated fill in floodplain could remain – which is not allowed actually without flood storage compensation. I have met with Mr. Talbot twice on this matter, copied him correspondence, went to the site with him to discuss it in the field, and he indicated he would forward a letter to the Owner requesting removal of fill or provision of a plan for compensatory flood storage. I have not received the latter letter as of this date.

Recommendation

The IWWC should order removal of all the fill material and restoration of the slope as spelled out in detail in my previous EPR (please see – excerpt from EPR follows below). Deadlines for completion of same should be clearly stipulated in the Order. Alternatives to that action are also provided therein.

The trees on the slope whose trunks are filled will die if this fill material is not removed soon (see photo of trunks, attached).. These trees are important as the root systems of these trees act to hold the slope together.

Excerpt from EPR, dated March 26, 2020

Under "Recommendation"

The submitted 'analysis', (copy forwarded in packet) completed by George Cotter, P.E., OCC Group, Inc., advocates for the fill to remain in place (except fill to be hand-dug out

around a few tree trunks). It also advocates for the fill to remain in the FEMA floodplain as it represents an infinitesimal loss of flood storage relative to the property's total floodplain. This argument is why floodplain regulations were enacted.

The fill located in the floodplain is depicted to be roughly the lower half of the slope area per engineer's drawing. This office has forwarded a copy of this report to the Planning Department. To comply with Flood regulations, this lower portion of the fill would need to be removed, or, alternatively, the required compensatory flood storage would need to be provided elsewhere on the subject property. The latter would result in the creation of a new wetlands disturbance with associated equipment access issues and re-vegetation issues. However, should the IWWC not require removal of this portion of the fill, and the Owner/Violator, after discussion with the Planning Department, elects to provide the compensatory flood storage rather than remove that portion of the fill deposited in the floodplain, a IWWC permit approval would be required for the construction of the compensatory flood storage area in the wetlands.

This office recommends that the IWWC order the removal and remediation of the affected violation area for the following reasons:

- The IWWC would have likely approved the installation of a guardrail/fencing/low berm along the rear driveway for safety, but would have likely denied the extension of the level grade towards the east and the rest of the filling activity if it had been proposed in an application submittal,
- The filling of the westerly portion of the easement area points to a possible future use of the area which would then be supported by the presence of the unpermitted fill,
- Allowing fill deposited without permitting to remain without a permit approval sets a precedent.
- The disturbed slope is likely be able to be sufficiently restored based on the probability that the original stable forest floor layer lies intact under the fill material as it was not graded prior to the deposition of the fill and thus will be only superficially disturbed by a careful excavation process, upon literature regarding successful outcomes in similar restoration situations, and considering the effectiveness of the recent slope violation remediation project at 52 Hanover Street. A well-executed erosion control plan is key.

Suggested enforcement directives for the IWWC to issue:

- Upland Review Area Remediation Plan - depicting the measures detailed below and additional erosion control measures, as applicable, to be submitted to Environmental Planning Office within two weeks. Plan to represent location of the easement area in favor of DeMartino Colony Realty, LLC (approximated by engineer, if necessary) and FEMA Floodway, in addition to the information on drawings recently submitted.
- Hand-dig fill material out from around the trunks of affected trees (also suggested by OCC Group). To be completed within one month's time (as trees are soon to leaf-out).

- Miscellaneous trash to be removed from the floodplain wetlands located at the base of the slope – to be completed without equipment entering the wetlands area. To be completed within one month's time.
- Row of staked hay bales to be installed at base of slope – in wetlands - across affected area prior to commencement of removal of fill activity.
- Fill material to be removed from the slope within the URA to the wetlands boundary (includes fill located below the elevation of the 100-year floodplain). Care to be taken so that the original slope face under the fill will remain intact as much as possible during the removal activities. (The original leaf litter layer will be in evidence during excavation under the rock fill layer.) The dry season of the year would be a preferred time for this activity.
- Any material that tumbles down into the wetlands area below in the removal process is to be carefully removed – by hand as may be necessary.
- To restore conditions, a leaf layer (2 - 4-inch depth) to be installed on the exposed slope face area. (Leaf material suggested to be obtained by collecting the top of the leaf layer at several suitable site localities without disturbing the ground substrate.) Erosion control blankets (ECBs) to be installed on slope on top of leaf layer to be held in place with 12" steel pins. Three (3) rows of staked hay bales – or, alternatively, tree limbs or 2" x 4" lumber - to be installed across the slope (on top of ECBs) to stabilize the slope and keep the ECBs flush to the grade.
- Fill material to be removed from the altered upper level area within the URA located to the east of the curbed driveway down to original grade and original grades to be restored in this area, i.e., original slope began closer to driveway.
- Row of staked hay bales to be installed at the top of slope once fill in level area is removed.
- Install straw mulch and seed on any exposed ground area within level area.
- Replacement trees (5) native oak species, 2-inch caliper, 8-10 feet in height), shrubs/understory trees (10) native species (black chokeberry, Northern bayberry, witch hazel, ironwood, serviceberry) to be installed on slope in disturbed area. Plantings to be completed through cuts in the ECBs. To be completed by Oct. 1, 2020.
- Replacement trees (3) native oak species (2-3 inch caliper, 8-12 feet in height) and shrubs/understory trees (10) native species (black chokeberry, Northern bayberry, witch hazel, ironwood, winterberry, serviceberry), to be installed in level area east of the curbed driveway in the general vicinity of trees removed along edge of the rear drive. Install straw mulch on ground in planting area. To be completed by Oct. 1, 2020.

- IWWC placards to be installed on posts in the location of the original placards which were installed along the edge of the rear drive on mature trees.
- Fencing (6-foot) to be installed across the lot close to curb line of rear driveway to effectively deter the dumping of trash down the slope to the east.
- Remediation work described above to commence as soon as possible upon approval of the required plan by the Environmental Planner at the latest by June 1 with plant material installation to be completed by October 1, 2020.
- Submit an application to install a guardrail along the easterly edge of the curbed driveway behind the carwash facility (as proposed by Owner) within the URA.

Finally, the IWWC should vote that the Notice of Violation is to remain in effect.

It is suggested the NOV remain and be affirmed every month until remediation work is satisfactorily completed.

Should the IWWC not wish to require removal and remediation of the violation area, then the removal of the forested slope vegetation and the placement of fill material in the URA to the wetland line needs to be approved to allow it to remain - to ratify it.

In this case, the IWWC would need to order the Owner to:

- Submit an 'after-the fact' application as soon as possible to be allowed to retain the fill material in place. In this scenario, the IWWC would need to decide to allow or prohibit activities to be conducted in this altered URA area, such as storage of materials (earthen or otherwise), location of dumpsters, storage of vehicles, passage of vehicle traffic, deposition of additional fill material, or any other proposed activities the Owner may have in mind.
- Submit an application to install a guardrail along the easterly edge of the curbed driveway behind the carwash facility (as proposed by Owner) within the URA.
- Submit an application regarding proposed construction of the compensatory flood storage area should that activity impact the jurisdictional area.
- At the IWWC Meeting scheduled to be held subsequent to the IWWC Meeting where the 'after-the fact' application is received, after considering the Applicant's presentation and this office's EPR on that proposed activity, the IWWC would vote on the application accordingly.

In the above scenario, the IWWC would still need to vote that the Notice of Violation is to remain in effect.

It is suggested the NOV remain and be affirmed every month until an 'after-the fact' application is filed and subsequently approved.

Attachment – photos taken May 15

CC: James E. Vitali, Chairman, IWWC;
1 NRSJ, LLC, 27 Musket Drive, North Haven, CT 06473 (copy by regular mail);
Tom Talbot, Acting Town Planner and Flood Manager;
David Carson, OCC Group; DeMartino Colony Realty, LLC, 920 So. Colony
Rd









Town of Wallingford, Connecticut

INLAND WETLANDS & WATERCOURSES COMMISSION

JAMES E. VITALI
CHAIRMAN

ERIN O'HARE
ENVIRONMENTAL AND NATURAL RESOURCES PLANNER

WALLINGFORD TOWN HALL
45 SOUTH MAIN STREET
WALLINGFORD, CT 06492
TELEPHONE (203) 294-2093
FAX (203) 294-2095

MEMORANDUM

To: Tom Talbot, Acting Town Planner and Flood Manager
From: Erin O'Hare, Environmental Planner
Date: March 26, 2020
Subject: IWWC

Re: 950 South Colony Road – 1NRSJ, LLC –carwash facility – (filling)

Regarding the subject violation, this office is forwarding the following documents for your review and comment regarding possible violations of fill regulations and floodplain regulations on the property that may influence the outcome of this enforcement matter:

- Copy of the Notice of Violation letter issued 2/28/20 (copy as forwarded to Kacie Hand, Town Planner & Flood Manager on 3/2/20),
- Copy of the engineering analysis by OCC Group, as submitted to this office,
- Copy of drawings: 'Existing Conditions' drawing, dated 3/18/20 and "Proposed Conditions" drawing, dated 3/18/20; by OCC Group, as submitted to this office

It is noted that ownership of the carwash facility transferred from DeMartino Colony Realty, LLC. to the present owner, 1NRSJ, LLC, and at that time an easement (not depicted on the drawings forwarded) was placed across the rear of the parcel in favor of DeMartino Colony Realty, LLC.. The violation area lies within the easement.

CC: James E. Vitali, Chairman, IWWC



Town of Wallingford, Connecticut

INLAND WETLANDS & WATERCOURSES COMMISSION

MEMORANDUM

To: IWWC
From: Erin O'Hare, Environmental Planner
Date: March 26, 2020

Re: 950 South Colony Road – 1NRSJ, LLC –carwash facility – (filling)

JAMES E. VITALI
CHAIRMAN

ERIN O'HARE
ENVIRONMENTAL AND NATURAL RESOURCES PLANNER

WALLINGFORD TOWN HALL
45 SOUTH MAIN STREET
WALLINGFORD, CT 06492
TELEPHONE (203) 294-2093
FAX (203) 294-2095

ENVIRONMENTAL PLANNER'S REPORT

Status

- Mar. 4: IWWC affirms NOV issued 2/28/20 & directs Owner/Violator to submit engineered drawing per particulars in EPR
- Mar. 5: Office conference with D. Carson, engineer
- Mar. 23: Submittal of 'Existing Conditions' drawing, dated 3/18/20 and "Proposed Conditions" drawing, dated 3/18/20, and engineer's analysis document
- Mar. 25: Third site investigation
- Mar. 26: Conference with Tom Talbot, Acting Town Planner & Flood Manager regarding referral of above documents

Comments From Other Agencies/Departments

Submittals were forwarded to Planning Dept. regarding the floodplain filling issue which may require provision of compensatory flood storage should the fill remain in place.

Requested/Required Information/Outstanding Issues

Upon review, the submitted engineered drawings, completed by OCC Group, Inc., provide the information that was requested to be provided except for:

- Omitted the requested representation of the location of the easement area in favor of DeMartino Colony Realty, LLC. (It is referenced in a plan note only.)

The proposed hemlock trees are not a viable species (adelgid aphid issue) and a substitute species would be advised. The Floodway boundary was not requested, however, it would be useful to provide.

Recommendation

The submitted 'analysis', (copy forwarded in packet) completed by George Cotter, P.E., OCC Group, Inc., advocates for the fill to remain in place (except fill to be hand-dug out around a few tree trunks). It also advocates for the fill to remain in the FEMA floodplain as it represents an infinitesimal loss of flood storage relative to the property's total floodplain. This argument is why floodplain regulations were enacted.

The fill located in the floodplain is depicted to be roughly the lower half of the slope area per engineer's drawing. This office has forwarded a copy of this report to the Planning Department. To comply with Flood regulations, this lower portion of the fill would need

to be removed, or, alternatively, the required compensatory flood storage would need to be provided elsewhere on the subject property. The latter would result in the creation of a new wetlands disturbance with associated equipment access issues and re-vegetation issues. However, should the IWWC not require removal of this portion of the fill, and the Owner/Violator, after discussion with the Planning Department, elects to provide the compensatory flood storage rather than remove that portion of the fill deposited in the floodplain, a IWWC permit approval would be required for the construction of the compensatory flood storage area in the wetlands.

This office recommends that the IWWC order the removal and remediation of the affected violation area for the following reasons:

- The IWWC would have likely approved the installation of a guardrail/fencing/low berm along the rear driveway for safety, but would have likely denied the extension of the level grade towards the east and the rest of the filling activity if it had been proposed in an application submittal,
- The filling of the westerly portion of the easement area points to a possible future use of the area which would then be supported by the presence of the unpermitted fill,
- Allowing fill deposited without permitting to remain without a permit approval sets a precedent.
- The disturbed slope is likely be able to be sufficiently restored based on the probability that the original stable forest floor layer lies intact under the fill material as it was not graded prior to the deposition of the fill and thus will be only superficially disturbed by a careful excavation process, upon literature regarding successful outcomes in similar restoration situations, and considering the effectiveness of the recent slope violation remediation project at 52 Hanover Street. A well-executed erosion control plan is key.

Suggested enforcement directives for the IWWC to issue:

- Upland Review Area Remediation Plan - depicting the measures detailed below and additional erosion control measures, as applicable, to be submitted to Environmental Planning Office within two weeks. Plan to represent location of the easement area in favor of DeMartino Colony Realty, LLC (approximated by engineer, if necessary) and FEMA Floodway, in addition to the information on drawings recently submitted.
- Hand-dig fill material out from around the trunks of affected trees (also suggested by OCC Group). To be completed within one month's time (as trees are soon to leaf-out).
- Miscellaneous trash to be removed from the floodplain wetlands located at the base of the slope – to be completed without equipment entering the wetlands area. To be completed within one month's time.
- Row of staked hay bales to be installed at base of slope – in wetlands - across affected area prior to commencement of removal of fill activity.

- Fill material to be removed from the slope within the URA to the wetlands boundary (includes fill located below the elevation of the 100-year floodplain). Care to be taken so that the original slope face under the fill will remain intact as much as possible during the removal activities. (The original leaf litter layer will be in evidence during excavation under the rock fill layer.) The dry season of the year would be a preferred time for this activity.
- Any material that tumbles down into the wetlands area below in the removal process is to be carefully removed – by hand as may be necessary.
- To restore conditions, a leaf layer (2 - 4-inch depth) to be installed on the exposed slope face area. (Leaf material suggested to be obtained by collecting the top of the leaf layer at several suitable site localities without disturbing the ground substrate.) Erosion control blankets (ECBs) to be installed on slope on top of leaf layer to be held in place with 12" steel pins. Three (3) rows of staked hay bales – or, alternatively, tree limbs or 2" x 4" lumber - to be installed across the slope (on top of ECBs) to stabilize the slope and keep the ECBs flush to the grade.
- Fill material to be removed from the altered upper level area within the URA located to the east of the curbed driveway down to original grade and original grades to be restored in this area, i.e., original slope began closer to driveway.
- Row of staked hay bales to be installed at the top of slope once fill in level area is removed.
- Install straw mulch and seed on any exposed ground area within level area.
- Replacement trees (5) native oak species, 2-inch caliper, 8-10 feet in height), shrubs/understory trees (10) native species (black chokeberry, Northern bayberry, witch hazel, ironwood, serviceberry) to be installed on slope in disturbed area. Plantings to be completed through cuts in the ECBs. To be completed by Oct. 1, 2020.
- Replacement trees (3) native oak species (2-3 inch caliper, 8-12 feet in height) and shrubs/understory trees (10) native species (black chokeberry, Northern bayberry, witch hazel, ironwood, winterberry, serviceberry), to be installed in level area east of the curbed driveway in the general vicinity of trees removed along edge of the rear drive. Install straw mulch on ground in planting area. To be completed by Oct. 1, 2020.
- IWWC placards to be installed on posts in the location of the original placards which were installed along the edge of the rear drive on mature trees.
- Fencing (6-foot) to be installed across the lot close to curb line of rear driveway to effectively deter the dumping of trash down the slope to the east.
- Remediation work described above to commence as soon as possible upon

approval of the required plan by the Environmental Planner at the latest by June 1 with plant material installation to be completed by October 1, 2020.

- Submit an application to install a guardrail along the easterly edge of the curbed driveway behind the carwash facility (as proposed by Owner) within the URA.

Finally, the IWWC should vote that the Notice of Violation is to remain in effect.

It is suggested the NOV remain and be affirmed every month until remediation work is satisfactorily completed.

Should the IWWC not wish to require removal and remediation of the violation area, then the removal of the forested slope vegetation and the placement of fill material in the URA to the wetland line needs to be approved to allow it to remain - to ratify it.

In this case, the IWWC would need to order the Owner to:

- Submit an 'after-the fact' application as soon as possible to be allowed to retain the fill material in place. In this scenario, the IWWC would need to decide to allow or prohibit activities to be conducted in this altered URA area, such as storage of materials (earthen or otherwise), location of dumpsters, storage of vehicles, passage of vehicle traffic, deposition of additional fill material, or any other proposed activities the Owner may have in mind.
- Submit an application to install a guardrail along the easterly edge of the curbed driveway behind the carwash facility (as proposed by Owner) within the URA.
- Submit an application regarding proposed construction of the compensatory flood storage area should that activity impact the jurisdictional area.
- At the IWWC Meeting scheduled to be held subsequent to the IWWC Meeting where the 'after-the fact' application is received, after considering the Applicant's presentation and this office's EPR on that proposed activity, the IWWC would vote on the application accordingly.

In the above scenario, the IWWC would still need to vote that the Notice of Violation is to remain in effect.

It is suggested the NOV remain and be affirmed every month until an 'after-the fact' application is filed and subsequently approved.

CC: James E. Vitali, Chairman, IWWC
1 NRSJ, LLC, 27 Musket Drive, North Haven, CT 06473 (copy by regular mail)
Tom Talbot, Acting Town Planner and Flood Manager
David Carson, OCC Group
DeMartino Colony Realty, LLC, 920 So. Colony Rd

OCC Group, Incorporated
ENGINEERS • SURVEYORS • PLANNERS
2091 Highland Avenue, Cheshire, CT 06410
TEL: (203) 250-7526 FAX: (203) 271-2727
EMAIL: OFFICE @OCCDESIGN . NECOXMAIL.COM

RECEIVED

MAR 23 2020

WLFD. INLAND/WETLAND

March 18, 2020

**ANALYSIS OF 50' WETLAND BUFFER AREA FILLING AT
1NRSJ,LLC - CARWASH FACILITY 950 SOUTH COLONY ROAD**

OCC has prepared an Existing Conditions Survey showing the rock fill that was placed within the 50' Buffer to the Regulated Wetlands on this site.

Based on a quantity analysis of pre and post topographic conditions we have determined that approximately 170 Cu. Yds. of fill material has been placed within the 50' buffer area. Of this quantity approximately 50 Cu. Yds. falls within the 100 Yr. flood limits. Due to the significant size (and extensive width) of the flood plain on this site, this infinitesimal loss of flood storage would have zero impact on the flood elevation. With regard to the wetlands, no material extends into the previously flagged wetland limits based on our available survey data.

The fill predominately consists of rock with a gradation of 3" - 6". Any fines within the fill material have apparently filtered into the voids; as there is no evidence of siltation at the base of the slope.

Due to the nature of the fill material there is no sign of erosion and the slope appears to be completely stable. As such, the disposition of this unpermitted filling activity presents a bit of a quandary.

Although complete or partial removal of this fill is possible, removal operations could easily result in adverse impacts to the regulated wetlands at the toe of the slope.

The obvious short term impacts would be the likely migration of loosened material into the wetlands as well as the possibility of disturbed slope erosion and downgradient siltation as the result of excavation operations.

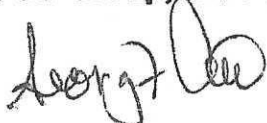
Although there are a number of distressed trees within the fill area which may ultimately die; there survival after possible excavation is similarly questionable.

In light of these parameters it is our professional opinion that mitigation measures might be a more viable regulatory option than actual fill removal.

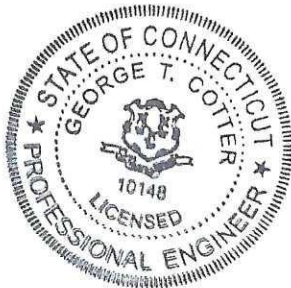
The presence of a large quantity of miscellaneous household debris at the toe of slope substantiates the long term utilization of this area for illegal dumping. Virtually all of this debris is located within the regulated wetlands. Careful removal of this debris should be the initial step in any mitigation effort. Secondly, measures should be implemented to negate the possibility of any future dumping. This could be facilitated by a combination of shrubbery planting and guide railing along the edge of the paved access.

The establishment of an evergreen buffer along the limits of the 50' wetland buffer would provide for long term protection of the wetlands as well as some enhanced wildlife habitat. Additionally, such planting (together with wetland placards) would serve to restrict any future intrusion into the regulated wetland buffer.

**Respectfully submitted,
OCC Group, Incorporated**



George T. Cotter PE #10148



Attachments:

**Existing Conditions Survey
Proposed Mitigation Plan**