

COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

SUGARBUSH MEADOW, LLC

Appellant,

v.

SUNDERLAND ZONING
BOARD OF APPEALS,

Appellee

No. 2008-02

**DECISION ON STIPULATION
AND
ENTRY OF JUDGMENT**

This matter currently involves the appeal by Sugarbush Meadow, LLC of a decision of the Sunderland Zoning Board of Appeals on Sugarbush's Notice of Insubstantial Change pursuant to 760 CMR 56.05(11). On January 22, 2008, Sugarbush appealed the Board's denial of its original comprehensive permit application to the Committee, which, after hearing, issued a decision ordering the Board to issue a comprehensive permit with conditions pursuant to the Committee's decision. *Sugarbush Meadow, LLC v. Sunderland*, No. 2008-02 (Mass. Housing Appeals Committee June 21, 2010). The Board appealed the decision to the Superior Court, which affirmed the Committee's decision. The Supreme Judicial Court thereafter upheld the decision of the Superior Court. *Zoning Board of Appeals of Sunderland v. Sugarbush Meadow, LLC*, 464 Mass. 166 (2013).

On or about January 16, 2015, pursuant to 760 CMR 56.05(11), Sugarbush filed a "Notice of Insubstantial Changes" with the Board. Following a meeting of the Board on February 4, 2015, Sugarbush was notified that the Board had determined the proposed changes were substantial. On February 23, 2015, pursuant to 760 CMR 56.05(11)(d), Sugarbush notified the Board that it objected to its determination of substantiality. The Board held a public hearing between March 4, 2015 and April 27, 2015, and on May 28, 2015, it issued a decision on the application for modification.

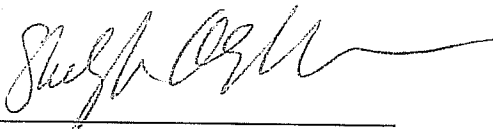
On June 17, 2015, Sugarbush filed a Request for Enforcement and/or Appeal of "Findings and Decision on Application for Modification of Comprehensive Permit Application G.L. c. 40B, ss. 20-23; Sunderland Comprehensive Permit Rules (Modification Decision)." Sugarbush contended that its Notice of Insubstantial Changes was constructively granted, and that the changes should have been determined insubstantial. Alternatively it asserted the appeal should be treated as an enforcement action pursuant to 760 CMR 56.07(6) because the Modification Decision did not comply with the Comprehensive Permit issued by the Committee. After the appeal was docketed, and a conference of counsel was held, the parties engaged in settlement negotiations and resolved the outstanding issues. In order to effectuate this settlement, on January 5, 2016, the Board and Sugarbush filed the Agreement and Stipulation for Entry of Final Decision executed by the parties.

The Agreement and Stipulation provides that the Modification Decision is struck in its entirety and restated as set forth within the Agreement and Stipulation. It provides for the construction of 150 rental units on the project site, of which 25 percent of the units shall be affordable in perpetuity. I have reviewed the Agreement and Stipulation attached hereto and I find it satisfactory. I hereby incorporate the Agreement and Stipulation by reference as part of this Decision on Stipulation.

The Board is directed forthwith to file the Agreement and Stipulation for Entry of Final Decision with the Sunderland Town Clerk in accordance with its terms and, in accordance with 760 CMR 56.07(6), to take any further steps necessary to formalize the permit for recording or other purposes. If the Board fails to act within thirty days of this decision, this decision shall be deemed, pursuant to G.L. c. 40B, § 23 and 760 CMR 56.07(6)(a), to be the modified Comprehensive Permit issued by the Board.

HOUSING APPEALS COMMITTEE

Date: February 5, 2016



Shelagh A. Ellman-Pearl
Presiding Officer

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

FRANKLIN, SS

HOUSING APPEALS COMMITTEE
DOCKET NO. 08-02SUGARBUSH MEADOW, LLC
Appellant

v.

TOWN OF SUNDERLAND ZONING
BOARD OF APPEALS
Appellee)
)
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)**AGREEMENT AND STIPULATION FOR ENTRY OF FINAL DECISION**

Now come Sugarbush Meadow, LLC ("Sugarbush") and the Town of Sunderland Zoning Board of Appeals ("the Board"), the parties in the above-entitled action, and hereby agree and stipulate that the Housing Appeals Committee shall enter a Decision on Stipulation serving to modify the "Findings and Decision on Application for Modification of Comprehensive Permit Application G.L. c. 40B, ss. 20-23; Sunderland Comprehensive Permit Rules" which was dated May 28, 2015 and filed with the Sunderland Town Clerk on June 2, 2015 (the "Modification Decision") as follows:

A. The Modification Decision is struck in its entirety and restated as follows:

I. Procedural History, Jurisdictional Findings, Project and Property Description, and General Findings.

1. The Procedural History, Jurisdictional Findings, Project and Property Description along with the Board's initial and General Findings are contained in the decision dated May 28, 2015 recorded with the Sunderland Town Clerk's Office.

2. Subject to compliance with the conditions described below, the changes requested in the Notice of Insubstantial Changes dated January 16, 2015 (the "Notice") filed by the Applicant, and as further described in the plans, are consistent with local needs.
3. On or about June 17, 2015, the Sunderland Conservation Commission issued a decision on the Applicant's Request for Determination of Applicability. The Conservation Commission's decision contained three conditions with respect to work proposed by the Applicant in the wetlands and buffer zone thereto.
4. The changes requested in the Notice are approved, subject to the definitions and conditions stated below.

II. Definitions:

1. "Plans" means the plans approved by the Housing Appeals Committee Docket Number 08-02 Decision dated June 21, 2010 (the "HAC Decision"), as modified by the plans submitted by the Applicant in conjunction with the January 16, 2015, "Notice of Insubstantial Changes" filed with the Board under 760 CMR 56.05(11) which include:
 - A. Plan # L1; titled Conceptual Site Plan; dated January 16, 2015; prepared by Berkshire Design Group, Inc. 4 Allen Place, Northampton, MA 01060
 - B. Plan # L2: titled Site Materials & Layout Plan, Clarifications on site plan; dated January 13, 2015, Revised 03-04-2015; prepared by Berkshire Design Group, Inc. 4 Allen Place, Northampton, MA 01060
 - C. Plan #L3; titled Site Utility Plan; dated April 27, 2015; prepared by Berkshire Design Group, Inc. 4 Allen Place, Northampton, MA 01060
 - D. Plan # L4; titled Site Grading & Drainage Plan; dated April 27, 2015; prepared by Berkshire Design Group, Inc. 4 Allen Place, Northampton, MA 01060
 - E. Plan # L2.1; titled Site Materials & Layout Plan, Clarifications on building & detention basin layout; dated March 4, 2015; prepared by Berkshire Design Group, Inc. 4 Allen Place, Northampton, MA 01060
 - F. Plan # L2.2; titled Site Materials & Layout Plan, Clarifications on driveway & paving plan layout; dated March 4, 2015; prepared by Berkshire Design Group, Inc. 4 Allen Place, Northampton, MA 01060
 - G. Plan # T1; titled Fire Truck Turning Analysis; dated March 4, 2015; prepared by Berkshire Design Group, Inc., 4 Allen Place, Northampton, MA 01060
 - H. Plan # T2; titled Fire Truck Turning Analysis; dated March 4, 2015; prepared by Berkshire Design Group, Inc. 4 Allen Place, Northampton, MA 01060
2. "Comprehensive Permit" means the HAC Decision, as affirmed by the decision of the Franklin County Superior Court and the Supreme Judicial Court and as modified by the conditions set forth

below. The conditions set forth herein shall be the operative conditions of approval and, in the event that any conflict exists between the conditions hereof and the prior decision of the HAC (as upheld by the Supreme Judicial Court), the conditions hereof shall control.

3. "Property" shall refer to the land on which the project is proposed, being more particularly described as Assessor's Map 16, Plot 2 and Map 13, Plot 80, containing approximately 56.55 acres.

4. "Project" shall mean the Project approved by the Comprehensive Permit, as depicted in the Plans.

III. Conditions:

1. Except as otherwise required by the conditions imposed by the Comprehensive Permit or by the "Final Site Plans," as defined below, the project shall be developed, constructed and completed in conformance with the Plans, as submitted to the Board.
2. No construction may commence and no building permits may be issued unless and until the Applicant provides the Board with evidence of final approval issued by MassHousing under 760 CMR 56.04(7).
3. No construction may commence and no building permits may issue unless and until the Applicant provides evidence that it has purchased the Property, as contemplated in its P&S with Bourey, LLC.
4. The total number of units that may be constructed on the Property is limited to 150 rental units. As permitted under the cases of Samuelson v. Planning Bd. of Orleans and Killorin v. Zoning Bd. of Appeals of Andover, this condition shall act as a continuing restriction against any further residential development on the Property, in perpetuity. Prior to the issuance of any certificates of occupancy, the Applicant shall also execute a complying restrictive covenant or other suitable restriction, in favor of the Town of Sunderland that reflects this restriction against further development, while still allowing for acceptable passive and active recreation opportunities and also allowing for use of the restricted area for water resource purposes, including but not limited to use for a public water supply.
5. Prior to any site work or issuance of building permits, final, fully designed site plans (the "Final Site Plans") and building plans (the "Final Building Plans") shall be submitted to the Board and the Town's Building Inspector.

The Final Site Plans shall be of a quality and level of detail sufficient to allow the Board, the Building Inspector and any peer review engineer (as described below) retained by the Board or the Building Inspector to review the Final Site Plans for consistency with the Comprehensive Permit, legal requirements and industry standards. No construction shall commence and no building permits shall issue under the Comprehensive Permit until the Board (or the Building Inspector where noted below) has issued approval of the Final Site Plans as being in conformance with the Comprehensive Permit, said approval to be in writing and said approval to be

administrative, not requiring a public hearing, and said approval not to be unreasonably withheld.

Within forty five (45) days (the "Review Period") from receipt of the materials required under this condition, the Board or its peer reviewer shall complete its review of the above materials or any one of them, provided however that such review period shall not commence if the Board or its peer reviewer notifies that the particular category of materials are incomplete, in which case, the Review Period for said category of materials will commence when completed materials are received. The Review Period shall not commence until a complete set of Final Site Plans has been submitted. If no written response or comments have been provided to the Applicant by the Board concerning the Final Site Plans and the Final Building Plans within the Review Period, the Final Site Plans and Final Building Plans, as delivered, will be deemed to have been approved.

The Review Period shall not commence if within twenty (20) days of the submission date, the Board, after consultation with its peer review engineer or the Building Inspector, notifies the Applicant in writing that the Final Site Plans are incomplete, and such notification shall contain an itemization of why said Plans are incomplete. If such notice of incompleteness is so given, then the Review Period shall commence upon the submission by the Applicant of the requested information and if no written response or comments have been provided to the Applicant by the Board within the Review Period, the Final Site Plans and Final Building Plans, as delivered, will be deemed to have been approved.

The Comprehensive Permit states that "no construction shall commence until detailed construction plans and specifications have been reviewed and have received final approval from the subsidizing agency[.]" Nothing in this Agreement shall be construed as obviating this original condition requiring Final Approval from the subsidizing agency pursuant to 760 CMR 56.04(7).

The Final Site Plans and the Final Building Plans shall include the following:

- a. An existing conditions plan, grading plan, utilities plan, and drainage plans, provided however that, while such plans should show infrastructure relating to water service and on-site sewer treatment, the Board's review and approval as described above is not required for such water and sewer treatment infrastructure, which is to be approved by the Commonwealth of Massachusetts Department of Environmental Protection ("DEP").
- b. A complete stormwater drainage report; and said report and drainage plans shall comply with all best management practices, consistent with generally recognized engineering standards and shall also include an O&M plan for the stormwater management system for the entire Project. The Board, through its peer review engineer, shall review, for consistency with general civil engineering standards for stormwater drainage, the aspects of the stormwater drainage report outside of the

jurisdiction of the Sunderland Conservation Commission under either the Wetlands Protection Act or the Sunderland Wetlands Bylaw, such review to be conducted in accordance with succeeding paragraph (c) below. The Board shall defer to the Conservation Commission with respect to any wetland impacts as well as stormwater management system matters that are within the jurisdiction of the Commission under either the Wetlands Protection Act or the Sunderland Wetlands Bylaw, such review to be conducted in accordance with succeeding paragraph (c) below.

- c. Elements of the Project are proposed in the buffer zone to wetlands. As noted above, the Applicant has received a Negative Determination of Applicability under the state Wetlands Protection Act (the "State Act") from the Sunderland Conservation Commission which has imposed certain conditions relating to review of those portions of the Project's proposed stormwater management system that invoke the Conservation Commission's jurisdiction under the State Act (hereinafter called the "NDA Review"). Such Conditions are attached hereto as Exhibit A. Accordingly, so as not to duplicate efforts, the Board agrees that the only review required related to wetlands is the NDA Review and such review satisfies the Board's concerns related to the local wetlands bylaw. The Conservation Commission, applying good professional engineering and wetland science practices, shall review all aspects of the Project including the stormwater management system, as described in the conditions to the Negative Determination. Specifically, no work may commence on the project until the applicant submits to the Conservation Commission all materials required under Conditions 1-3 of the Commission's Negative Determination of Applicability; and the Conservation approves the Project as being in compliance with such conditions, with notice of such approval being provided to the Board and the Building Inspector. It is the Applicant's burden to coordinate any such review by the Commission.
- d. Site plans showing emergency vehicle access to the site and to all proposed buildings. It is understood that the emergency vehicle turn analyses plans were submitted to the Board, Plan #T1 & #T2, dated March 4, 2015; and further, the site plans showing emergency vehicle access to the site shall include the details of a frangible gate.
- e. Landscaping plans, based on the preliminary landscaping plans submitted to the Board (Sheet L2), which were approved by the Board in its May 28, 2015 Decision. The Applicant shall reasonably maintain landscaping in the form and quality approved by the Board. The Applicant may also make improvements to the landscaping, provided that such improvements do not impede emergency access.
- f. Lighting plan, based on the preliminary lighting plan submitted to the Board (Sheet L3), which was approved by the Board in its May 28, 2015 Decision, which demonstrate that light spill (or light pollution) will not exceed one-half (0.5) foot candle at abutting residential property lines. Such plan shall comply

with accepted "dark sky" requirements.

- g. Architectural plans signed by a registered architect depicting floor plans, elevations and indicating inclusion of sprinkler systems that comply with NFPA 13 requirements. Peer review may only be utilized if the Board and the Building Inspector reasonably determines that such review is necessary to assist in determining whether the architectural design meets accepted standards for safe and adequate housing. Architectural plans shall be reviewed and approved by the Building Inspector for any and all requirements under the MA Building Code.
- h. A construction mitigation plan (to be reviewed and approved by the Building Inspector) that addresses all aspects of construction mitigation, including, but not limited to: (i) stockpiling of materials; (ii) trucking routes (iii) dust control; (iv) a concise construction sequencing plan; (v) an erosion control plan; (vi) contractor contact information; and (vii) and a 24 hour emergency contact.

The Board, or the Conservation Commission as the case may be, may obtain reasonable peer review of any or all of these materials (except as limited above) from qualified engineers, architects or other consultants, and may consult with other municipal boards and officials with respect to the same. The Applicant shall bear the reasonable costs for any such peer review in accordance with the procedures under G.L. c. 44, §53G. The meaning of "reasonable" shall include the following: the Applicant shall not be subject to duplicate costs or reviews for any and all items that are being reviewed and/or inspected by another authority required and/or recognized under the laws and/or regulations of the Commonwealth. To the extent deemed necessary by the Building Commissioner, the Town may retain a qualified consultant or inspectional professional to assist the Town's inspectional department and to oversee the inspections necessary to review plans, coordinate inspections and authorize issuance of occupancy permits. This consultant/inspectional professional may be an engineer or a building professional qualified to conduct inspections, as may be required. The costs for this consultant shall be borne by the Applicant.

- 6. No building permits for the Project may be issued until the Applicant submits to the Board a copy of the final traffic mitigation plan for improvements along Route 116, as approved by MDOT. No occupancy permits for the Project may be issued until all such improvements have been fully constructed. Related to such improvements, the Applicant is also required to: (a) diligently pursue with MDOT the approval of construction of a sidewalk to the convenience store along the easterly side of Route 116 (the "sidewalk"); and (b) support the Board's request to have MDOT implement a reduction in the speed limit in the vicinity of the Project on Route 116 (the "speed reduction"); and to provide the Board with evidence of such efforts. If despite such diligent effort and support as aforesaid, MDOT does not approve the sidewalk or the speed reduction within six (6) months from the date of the Applicant's submission of any such proposal to MDOT or any other applicable governing authority, then the sidewalk and speed reduction shall not be required.

7. A duly executed Regulatory Agreement in the form prescribed by the Applicant's subsidizing agency shall be recorded at the Registry of Deeds prior to the issuance of Building Permits; provided, however, the Board recognizes that the subsidizing agency may not sign such Regulatory Agreement until the actual closing of a construction loan for the project, and that a requirement for such closing may be the issuance of the building permits, in which case, if the Building Inspector is satisfied that building permits are ready to be issued subject to compliance with this condition and the payment of applicable building permit fees, then the Building Inspector shall issue a letter to the subsidizing agency stating that the building permits will be issued upon submission by the Applicant of a copy of the executed and recorded Regulatory Agreement and the payment of such building permit fees.
8. The Applicant shall be responsible for scheduling a pre-construction meeting with the Building Inspector at least fifteen (15) days before the commencement of infrastructure construction. During the construction of the Project's infrastructure, the Applicant shall be responsible for the scheduling of a meeting with the Building Inspector and any relevant town department at least once every three months to discuss the progress of construction.
9. As-built plans shall be submitted to the Building Inspector at least thirty (30) days prior to the issuance of the occupancy permit for the final residential building.
10. No Building Permits may be issued until the Applicant provides evidence of approval of the project's water source and wastewater treatment facility from DEP.
11. Operation and maintenance of the stormwater management system, as approved in accordance with the foregoing conditions, shall be the sole responsibility of the Applicant and its successors and assigns. In the event that the Applicant or its successors fail to maintain or repair the stormwater management system in accordance with the approved plans, the Town may, at its sole discretion, and after reasonable notice to the Applicant or its successors, enter onto the property to conduct any necessary maintenance or repairs. In such event, the Applicant or its successors shall promptly reimburse the Town for all of its reasonable costs and expenses. Should such reimbursement not be provided, the Town may place a lien on the property. Catalog cuts of all storm water structures shall be provided to the Board prior to installation.
12. The Applicant shall not be issued any building permits unless and until it provides the Building Inspector with any and all required and effective approvals under the Wetlands Protection Act, along with evidence that it has complied with any pre-construction conditions of such approvals, including, but not limited to, any pre-construction conditions imposed in the Sunderland Conservation Commission's Negative Determination of Applicability, dated June 16, 2015.
13. With respect to each of the Applicant's requests for waivers from local by-laws and regulations:
 - a. The Board approves all of the waivers to the requirements in the Zoning Bylaw and

- other local bylaws and regulations only to the extent necessary in order to build the Project that is shown on the Final Site Plans and Final Building Plans as approved under Condition 5 hereof.
- b. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§20-23.
 - c. Any by-law or regulation not inconsistent with the Project as approved and not expressly waived hereunder shall be strictly enforceable. Any subsequent revision to the Plans, including but not limited to revisions that are apparent in the Final Site Plans that require additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11).
 - d. There shall be no waiver of any municipal fees.
- 14. The Applicant shall construct the buildings consistent with the Final Site Plans and Final Building Plans as approved under Condition 5, above.
 - 15. Upon construction and occupancy, the buildings in the proposed development shall be considered non-conforming with existing zoning bylaws. While the nonconforming nature of the Project is approved pursuant to the authority granted to the Board under c. 40B, ss. 20-23, such nonconformities are not grandfathered under G.L. c. 40A, §6. Accordingly, alterations and extensions of such buildings must be approved by the Board in accordance with the procedures under 760 CMR 56.05(11).
 - 16. All hydrant locations and designs are subject to the reasonable final approval of the Sunderland Fire Department or other appropriate State official.
 - 17. The emergency access entrance at Plumtree Road must be designed in a manner to prevent daily traffic from entering and exiting while facilitating efficient access by emergency vehicles. No building permits may be issued until the plans for the emergency access and any gate thereto are approved by the Sunderland Fire Department or appropriate state official under the State Building Code, as may be applicable, such approval not to be unreasonably withheld. Notwithstanding the foregoing, the Plumtree Road access may be used for construction vehicles during initial construction, subject to the Sunderland Police Department's approval of the trucking routes, which shall not be unreasonably withheld or delayed.
 - 18. Twenty-five (25%) of the Project's units (or such other percentage of the units as may be approved by the subsidizing agency) shall be restricted, in perpetuity, for lease at a rate that is affordable to households earning no more than 80% of Area Median Income (or such other percentage of Area Median Income as may be approved by the subsidizing agency). Evidence of the recording of the subsidizing agency's Regulatory Agreement containing such restrictions, or of some other affordable housing restriction containing such restrictions required by the subsidizing agency, shall be provided to the Board.
 - 19. Insofar as allowed under M.G.L. c. 40B and other applicable law and by the Subsidizing Agency, with respect to at least 70% of the affordable apartments, the Applicant shall

provide a preference category for Sunderland residents and employees of the Town of Sunderland and its school district, for housing. This preference shall be implemented through the designated lottery agent, which shall also review the Applicant's Affirmative Fair Housing Marketing Plan, which such plan shall be submitted to the subsidizing agency for approval, with a copy submitted to the Board. The costs associated with the marketing plan, including the advertising and processing for the affordable apartments, shall be borne by the Applicant. The Board acknowledges that it, or some other appropriate town official or agent, will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of the Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence. If the Board or its designee does not provide such information within thirty (30) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency or DHCD, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above. A lottery shall be established in a form approved by the Applicant's subsidizing agency to effectuate this local preference, with an approved secondary lottery for all other applicants as approved by such subsidizing agency. The Board shall be kept apprised of all events in the lottery process and shall be copied on all documentation relating thereto.

20. The Applicant shall provide the Board annually with copies of any reports filed with the Subsidizing Agency regarding tenancy of the affordable units.
21. The Applicant's profit generated by the use of the Property shall not exceed limitations imposed by the subsidizing agency under M.G.L. c. 40B, ss. 20-23 and the regulations promulgated pursuant thereto. The Board shall be provided with a copy of any and all limited dividend audits and certified cost/income statements, as well as any other correspondence or public records that are shared by and between the Applicant and any entity that conducts cost certification or audits of the Project, unless such records are considered proprietary and/or confidential financial records under the Massachusetts public documents laws.
22. The Applicant shall reasonably assist the Town with the preparation and execution of any document that DHCD may require the Town to file in order to have all of the units in the Project included on the Town's Subsidized Housing Inventory.
23. As security for completion of the infrastructure shown on the Final Site Plans, including but not limited to the driveways, sidewalks, parking, stormwater management system, lighting, water and sewer systems, landscaping and utilities (collectively the "Infrastructure"), the release of occupancy permits for the buildings shall be subject to the following restrictions:
 - a. No occupancy permit for a unit shall be issued until: (1) the driveways and parking areas shown on the Final Site Plans providing access to and parking for the particular unit's building have been adequately installed, excepting the final course

of pavement for the driveway and parking area; and (2) all other Infrastructure as shown on the Final Site Plans essential for such unit's building, as approved by the Building Inspector or the Board's peer review engineer, has been constructed or installed so as to adequately serve said building. The final infrastructure for the Project, including, but not limited to, final course of pavement, curbing, remaining landscaping, and any "punch list" items identified by the Building Inspector (the "Final Infrastructure") shall be installed prior to the occupancy permit for the final building in the Project, except for any such items which cannot be completed at the time the building is otherwise suitable for occupancy due to weather conditions and subject to normal construction industry standards. The Applicant shall provide a bond in the amount to be determined by the Building Inspector, for any portions of the Final Infrastructure not completed prior to the issuance of the final occupancy permit. The Building Inspector shall coordinate such inspections with other appropriate Town officials, such as but not limited to the Highway Superintendent, as may be applicable, in determining whether such infrastructure is complete.

b. The Board may initiate an enforcement action to compel the completion of any infrastructure not completed consistent with this Condition.

c. Notwithstanding the foregoing, the Applicant shall be permitted to seek the Board's approval for the substitution of the foregoing provisions of this paragraph with a suitable agreement that provides financial security in lieu of the retention of occupancy permits. Such agreement and the amount of security contemplated thereunder is subject to the prior review and approval of the Board, in consultation with its counsel and peer review engineer, and approval of such agreement and amount shall not be unreasonably withheld.

24. During construction, the Applicant shall maintain all feasible and reasonable means of dust control and shall collect all debris on a daily basis. No construction, deliveries or any other activities may occur on Sundays or on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas Eve or Christmas. No construction or deliveries may begin before 7:00 a.m. nor continue past 5:00 p.m., unless approved in advance by the Board. Notwithstanding the foregoing, interior construction that doesn't generate excessive noise may occur on weekday evenings, until 10:00p.m., and on Sundays from 8:00 a.m. to 6:00 p.m. Trucks and other equipment may not idle or warm up until 6:45 a.m. on approved construction days.
25. Snow and ice removal shall be the responsibility of the Applicant. The Final Site Plans shall indicate a suitably sized and located area for snow storage. Snow and ice removal shall be undertaken as soon as is practicable after snowfall and shall not impede or obstruct the driveways, sidewalks, parking areas or hydrants in the Project.
26. The Applicant shall provide the Board with a copy of any approval by the subsidizing agency of a property management company adequately experienced and suitably bound to comply with the provisions of the Comprehensive Permit, as approved by the subsidizing

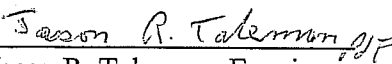
agency, to act as property manager for the Project. Management for the Project shall be available (but not on-site) twenty-four (24) hours a day to respond to emergency matters.

27. Except as may be otherwise required in this Permit, changes to the Project and the conditions contained herein shall be processed in accordance with 760 CMR 56.05(11), as it may be amended or re-codified.
28. Any and all easements to the Town of Sunderland that may be necessary to complete and occupy the Project, and to ensure maintenance of project infrastructure pursuant to Condition No. 11 above, shall be in a form approved by the Board's Counsel, such approval not to be unreasonably withheld.
30. This Permit shall run with the land and be binding on the Applicant and any of its assignees and successors in interest at the Property or with respect to the Project. Any transfer or assignment of this permit shall be subject to written confirmation from the subsidizing agency as provided in 760 CMR 56.05(12)(b).
31. As provided in 760 CMR 56.05(13)(c), this permit shall expire if construction is not commenced within three years from the date on which it becomes final as provided in 760 CMR 56.05(13)(b)), unless such time is extended, for good cause. For purposes of this paragraph, commencement of construction shall be defined as the construction of the building foundation for at least one of the Project's proposed buildings.
32. Any finding, by any court of competent jurisdiction, that any condition hereof is unenforceable shall not otherwise affect the enforceability of the remainder of the conditions hereof.
33. A copy of this Agreement, along with the Final Decision issued by the Housing Appeals Committee, shall be filed with the Sunderland Town Clerk's Office, with notice to be provided by the Town to parties in interest.
34. Appeals of this permit shall be made pursuant to G.L. c. 40B, ss. 20-23.
35. This Agreement and Stipulation shall be enforceable as a Final Decision and/or Order of the Housing Appeals Committee. The parties agree that they will not appeal said Final Decision and/or Order of the Housing Appeals Committee, expressly waiving any right of appeal, whether statutory or otherwise, and acknowledge that they have been fully represented by counsel and informed of their rights, and that they have voluntarily entered into this Agreement and Stipulation for Entry of Final Decision.
36. This Agreement and Stipulation for Final Decision shall not take effect until it has been recorded with the Franklin County Registry of Deeds, along with any Final Decision and/or Order of the Housing Appeals Committee, and such recorded documents shall be

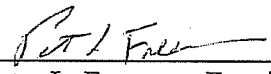
provided to the Board and the Sunderland Building Commissioner prior to the issuance of building permits.

Dated: January 4, 2016

Sunderland Zoning Board of Appeals
By its Attorney,


Jason R. Talerman, Esquire
Paul J. Haverty, Esquire
Blatman, Bobrowski, Mead & Talerman, LLC
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Sugarbush Meadow, LLC
By its Attorney,


Peter L. Freeman, Esquire
Freeman Law Group LLC
86 Willow Street, Unit 6
Yarmouthport, MA 02675

Tel: 508-362-4700
Fax: 508-362-4701

EXHIBIT A



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 2 - Determination of Applicability
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. General Information

Important:
 When filling out
 forms on the
 computer, use
 only the tab
 key to move
 your cursor -
 do not use the
 return key.



From:

Sunderland
 Conservation Commission

To: Applicant

Scott Nielsen

Property Owner (if different from applicant):

Name

Name

171 Gray St.

Mailing Address

Mailing Address

Amherst

MA
 State

01002
 Zip Code

City/Town

State

Zip Code

1. Title and Date (or Revised Date if applicable) of Final Plans and Other Documents:

Overall Site Plan - RDA L1.0 (no revisions)

6/1/15

Title

Date

Site Grading Plan - RDA L1.1 (no revisions)

6/1/15

Title

Date

Site Grading Plan - RDA L1.2 (no revisions)

6/1/15

Title

Date

2. Date Request Filed:

6/4/15

B. Determination

Pursuant to the authority of M.G.L. c. 131, § 40, the Conservation Commission considered your Request for Determination of Applicability, with its supporting documentation, and made the following Determination.

Project Description (if applicable):

Construction of 5 apartment buildings with 150 units all
outside any Buffer Zone and Resource Areas. Limited grading,
paving, erosion control and detention basin within Buffer
Zone only.

Project Location:

Amherst Rd. (Route 116)

Street Address

Sunderland

City/Town

31D

Assessors Map/Plat Number

011

Parcel/Lot Number



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 2 -- Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

B. Determination (cont.)

The following Determination(s) is/are applicable to the proposed site and/or project relative to the Wetlands Protection Act and regulations:

Positive Determination

Note: No work within the jurisdiction of the Wetlands Protection Act may proceed until a final Order of Conditions (issued following submittal of a Notice of Intent or Abbreviated Notice of Intent) or Order of Resource Area Delineation (issued following submittal of Simplified Review ANRAD) has been received from the issuing authority (i.e., Conservation Commission or the Department of Environmental Protection).

☐ 1. The area described on the referenced plan(s) is an area subject to protection under the Act. Removing, filling, dredging, or altering of the area requires the filing of a Notice of Intent.

☐ 2a. The boundary delineations of the following resource areas described on the referenced plan(s) are confirmed as accurate. Therefore, the resource area boundaries confirmed in this Determination are binding as to all decisions rendered pursuant to the Wetlands Protection Act and its regulations regarding such boundaries for as long as this Determination is valid.

☐ 2b. The boundaries of resource areas listed below are not confirmed by this Determination, regardless of whether such boundaries are contained on the plans attached to this Determination or to the Request for Determination.

☐ 3. The work described on referenced plan(s) and document(s) is within an area subject to protection under the Act and will remove, fill, dredge, or alter that area. Therefore, said work requires the filing of a Notice of Intent.

☐ 4. The work described on referenced plan(s) and document(s) is within the Buffer Zone and will alter an Area subject to protection under the Act. Therefore, said work requires the filing of a Notice of Intent or ANRAD Simplified Review (if work is limited to the Buffer Zone).

☐ 5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by:

Name of Municipality

Pursuant to the following municipal wetland ordinance or bylaw:

Name

Ordinance or Bylaw Citation



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B. Determination (cont.)

- ☐ 6. The following area and/or work, if any, is subject to a municipal ordinance or bylaw but not subject to the Massachusetts Wetlands Protection Act:

- ☐ 7. If a Notice of Intent is filed for the work in the Riverfront Area described on referenced plan(s) and document(s), which includes all or part of the work described in the Request, the applicant must consider the following alternatives. (Refer to the wetland regulations at 10.58(4)c. for more information about the scope of alternatives requirements):

- ☐ Alternatives limited to the lot on which the project is located.
- ☐ Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
- ☐ Alternatives limited to the original parcel on which the project is located, the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality.
- ☐ Alternatives extend to any sites which can reasonably be obtained within the appropriate region of the state.

Negative Determination

Note: No further action under the Wetlands Protection Act is required by the applicant. However, if the Department is requested to issue a Superseding Determination of Applicability, work may not proceed on this project unless the Department fails to act on such request within 35 days of the date the request is post-marked for certified mail or hand delivered to the Department. Work may then proceed at the owner's risk only upon notice to the Department and to the Conservation Commission. Requirements for requests for Superseding Determinations are listed at the end of this document.

- ☐ 1. The area described in the Request is not an area subject to protection under the Act or the Buffer Zone.
- ☐ 2. The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent.
- ☒ 3. The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any).

See attached "Sugarbush ADA Conditions"

- ☐ 4. The work described in the Request is not within an Area subject to protection under the Act (including the Buffer Zone). Therefore, said work does not require the filing of a Notice of Intent, unless and until said work alters an Area subject to protection under the Act.



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B. Determination (cont.)

- ☐ 5. The area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:

Exempt Activity (site applicable statutory/regulatory provisions)

- ☐ 6. The area and/or work described in the Request is not subject to review and approval by:

Name of Municipality

Pursuant to a municipal wetlands ordinance or bylaw.

Name

Ordinance or Bylaw Citation

C. Authorization

This Determination is issued to the applicant and delivered as follows:

☒ by hand delivery on

☐ by certified mail, return receipt requested on

June 17, 2015

Date

Date

This Determination is valid for three years from the date of issuance (except Determinations for Vegetation Management Plans which are valid for the duration of the Plan). This Determination does not relieve the applicant from complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.

This Determination must be signed by a majority of the Conservation Commission. A copy must be sent to the appropriate DEP Regional Office (see <http://www.mass.gov/dep/about/region.findyour.htm>) and the property owner (if different from the applicant).

Signatures:

Jennifer M. Leuker

David H. G.

W. J. C.

6/16/15

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

D. Appeals

The applicant, owner, any person aggrieved by this Determination, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate Department of Environmental Protection Regional Office (see <http://www.mass.gov/dep/about/region.findyour.htm>) to issue a Superseding Determination of Applicability. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form (see Request for Departmental Action Fee Transmittal Form) as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant if he/she is not the appellant. The request shall state clearly and concisely the objections to the Determination which is being appealed. To the extent that the Determination is based on a municipal ordinance or bylaw and not on the Massachusetts Wetlands Protection Act or regulations, the Department of Environmental Protection has no appellate jurisdiction.

Sugarbush RDA Conditions

1. At least 30 days prior to construction, the applicant/owner will provide a copy of the drainage plan that is stamped and has original signature of a Massachusetts registered Professional Civil Engineer showing the stormwater flow paths for all flow leaving the proposed pond outlets as it passes through buffer zone to where flow will enter any Resource Area (i.e. Pond, Bank, Wetland, Stream). The plan must include contours and show all details of how flow energy is dissipated before it enters the buffer zone area during 10 yr, 25 yr and 100 yr storm events. Flow velocity calculations at the limits of the buffer zone must be included to demonstrate that no scouring will occur in down gradient buffer zone area because of the new flow routes from the basins.
2. Any change in the location of the point source discharge from the detention ponds will be clearly labeled, described and verified as part of the drainage and stormwater management plan. These must remain outside the Buffer Zone and follow Best Management Practices (BMPs) and the DEP Stormwater Management Policy.
3. Prior to any work, the Sunderland Conservation Commission will inspect all the erosion control barriers and be able to inspect as needed during construction.

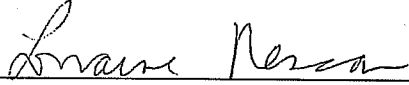
Certificate of Service

I, Lorraine Nessar, Clerk to the Housing Appeals Committee, certify that this day I caused to be mailed, first class, postage prepaid, a copy of the within Decision on Stipulation and Entry of Judgment in the case of Sugarbush Meadow, LLC v. Sunderland Zoning Board of Appeals, No. 2008-02, to:

Peter L. Freeman, Esq.
Thomas W. Aylesworth, Esq.
Freeman Law Group, LLC
86 Willow Street, Unit 6
Yarmouthport, MA 02675

Jason R. Talerman, Esq.
Paul J. Haverty, Esq.
Blatman, Bobrowski, Mead & Talerman, LLC
730 Main Street, Suite 2B
Millis, MA 02054

Dated: 02/08/15


Lorraine Nessar, Clerk
Housing Appeals Committee