

**SOUTH HADLEY PLANNING BOARD VIRTUAL PUBLIC HEARING
CONTINUANCE:**

Application for Definitive Plan and Stormwater Management Permit approval for proposed 'North Pole Estates' subdivision located at west side of Hadley Street (aka State Route 47) and along Sullivan Lane (Assessor's Map Number #54 as Parcels #15 & #20 and on Assessor's Map Number #56 as Parcels #20, #26, #42, #43, #43A, #104, #109, #112, and #121).

**MINUTES OF JUNE 15, 2020
As Approved**

Present: Brad Hutchison, Chair; Diane Mulvaney, Vice-Chair; Joanna Brown, Clerk; Melissa O'Brien; Member; Nate Therien, Member (not a voting member for this Public Hearing); Richard Harris, Director of Planning and Conservation; Anne Capra, Conservation Administrator/Planner; and Colleen Canning, Senior Clerk Planning and Conservation

Chair Hutchison called the Public Hearing continuance to order at 6:45 PM.

The applicant's representative, Jay Ouellette of Chicopee Concrete Services, was present at the virtual meeting along with his consultants; Rob Levesque, Sofia Bitzas, and Filipe Cravo of R. Levesque Associates; Paul Tanner of O'Reilly, Talbot & Okun Associates; and Attorney Michael Seidel.

Representatives of the third-party peer-review, Jim Reardon and Frank Getchel of Weston and Sampson, were present at the virtual meeting.

The Town's representative legal counsel, Attorney Jay Talerman, was present at the virtual meeting.

Mr. Harris overviewed the status of the applications before the Board. This hearing was continued from the Board's February 10, 2020 meeting. The project had been peer-reviewed and the applicant and the reviewer had exchanged correspondences. The Covid-19 pandemic had stalled all timelines for decisions and prevented in-person meetings. This hearing was being held on a digital platform to allow planning board business to progress. He explained that member Nate Therien would not be a voting member of the Board for this item as he was elected after the opening of the Public Hearing.

Rob Levesque overviewed the application submission and the correspondences with the third-party peer reviewer, Weston and Sampson. He requested that regulatory requirements be referenced if the Board or the peer-reviewer noted deficiencies within the applications

Jim Reardon spoke to his firm's peer-review of the proposed Stormwater Management Plan. The plan satisfied the 10 requirements within the DEP Stormwater handbook. However, the stormwater basin had no overflow even though the basin was sized for the 100 year storm. He advised that the basin be planted with loam and seed. Additionally, the rainfall data used outdated TP-40 figures even though it satisfied the regulatory requirement. Rob Levesque

responded that overflow could be added to the stormwater basin and the rainfall data satisfied the requirements of the application.

Frank Getchel spoke to his firm's peer-review of the hydrological impact assessment. He explained that the hydrological assessment study did not address the possibility of contaminants. There was limited groundwater data to assess water flow and quality during recharge. Title 5 requirements were only related to nitrogen levels and only considered levels relating to a single system; rather than the impact of an entire development.

Rob Levesque responded that certain contaminants were illegal to use within the Water Supply Protection District so concerns of contaminants were a theoretical issue. Mr. Harris noted that the referenced bylaw was not South Hadley's.

Attorney Jay Talerman noted that the Planning Board's regulations require a hydrological impacts study for development within the Water Supply Protection District. Planning Board regulations, unlike zoning bylaws, were not frozen at the time of application submission. Jim Reardon noted that the peer-review identified what best management practices would be for development within zone two of a public aquifer.

Chair Hutchison noted that the proposed work area had been reduced from the preliminary to the definitive plan. He inquired if the monitoring wells analyzed within the hydrological assessment were within the reduced work site. Rob Levesque confirmed that the reduced work site was void of original well holes.

Chair Hutchison inquired how the filtering capacity of the soils would be reduced if excavation occurred. Frank Getchel responded that, in a hypothetical situation, removal of 50% of homogeneous soil would reduce the filtration time by 50%.

Clerk Brown observed that the third-party peer-review recommended an alternatives analysis for the amount of excavation. She addressed concerns for revegetation of the site following excavation. Rob Levesque responded that discussions of an alternative analysis would more appropriate be considered when the Definitive Plan itself was discussed at the next public hearing on Monday, June 22nd. For clarity he explained that stormwater management systems would be vegetated with 'loam and seed'. Erosion controls would be installed during development of the street. As lots would be sold off, it would be the individual owner's responsibility to vegetate their own lot.

Vice-Chair Mulvaney felt as though the hydrological assessment did not go far enough. She advised that the Planning Board should work with Weston and Sampson, the peer-review team, to develop scenarios for which the development's impact could be assessed when faced with particular occurrences.

Member O'Brien inquired about pollution prevention and erosion control within the proposed stormwater management plan. Filipe Cravo responded that construction controls were within the appendix of the application submission. Member O'Brien inquired if there was a requirement for

reclamation of the active gravel pit. Mr. Harris responded that reclamation was not required as mining of the area began prior to contemporary standards for reclamation.

Chair Hutchison observed that the site was actively being excavated. He inquired if the existing conditions on the plans were accurate. Rob Levesque responded that all proposed grades would be achieved.

Chair Hutchison opened the hearing to public comment at 8:34 PM.

Neva Tolopko, South Hadley resident, addressed the Board. She provided a written comment which she read out loud. (Attached) She referenced a legal memorandum (Attached) which was submitted to the Planning Department in opposition of the proposed development. She additionally addressed concerns for the inadequacy of the hydrological assessment study. Rob Levesque had no comment in response.

Robert Pleasure, South Hadley resident, addressed the Board. He provided written comment (Attached) He addressed concerns for the inadequacy of the hydrological assessment study. Rob Levesque had no comment in response.

Bill DeLuca, South Hadley resident, addressed the Board. He noted that there was a regulatory requirement for an inter-departmental meeting to review Definitive Subdivision Plan applications. He inquired if board and commission members would be included in that meeting. Mr. Harris replied that the meeting was historically held by staff only. However, further considerations could be made at the next public hearing date which specifically would address requirements of the definitive plan itself.

Kevin McCaffrey, Mount Holyoke College, addressed the Board. He noted that the proposed development was within zone two of the dry brook well which Mount Holyoke College was that largest user of. He mentioned that a number of Town boards and commissions expressed concern for the proposed development. Professor Al Werner of Mount Holyoke College submitted a letter of opposition which cited concerns for contamination of the water supply. (Attached)

Frank DeToma, South Hadley resident, submitted a google form prior to the meeting expressing interest in speaking at the hearing. However, when called upon, he did not make comments.

Anne Capra read out loud questions submitted by the public through google forms to be considered during the hearing.

Nate Therein, South Hadley resident, submitted written comment. (Attached) He inquired when mining activities would stop and what impact the excavation had on the aquifer. Rob Levesque responded that excavation would continue within parcel 43 regardless of the outcome of the Definitive Subdivision application as it was a grandfathered activity.

Nate Therein submitted written comment. (Attached) He inquired why the applicant relied on TP-40 rainfall projections rather than the most up-to-date data. Rob Levesque responded that the data used was the current standard.

Nate Therein submitted written comment. (Attached) He inquired if the storm water management plan would be adequate for later stages of development. Rob Levesque responded that the system was designed to handle the first phase of development. If and when there were later stages of development, additional stormwater controls would be proposed.

Nate Therein submitted written comment. (Attached) He inquired about the level of contaminants associated with development. Rob Levesque had no comment in response as the question was hypothetical.

Jacqueline Dupre, South Hadley resident, submitted written comment. (Attached) She recommended denying the application as she saw no reason to approve.

Robert Schwartz, South Hadley resident, submitted written comment. (Attached) He inquired if excavation was allowed to continue during the COVID-19 State-of-Emergency. Rob Levesque responded that excavation was allowed to continue as it was deemed an essential activity per the Governor's order.

Mr. Harris noted that an e-mail had been received from Brenda Griffin, South Hadley resident. (Attached) She inquired what the potential for pollution of her property was as her home was within close proximity to the proposed development. Rob Levesque had no comment in reply.

Clerk Brown noted that the peer-review stated that the stormwater management plan, as proposed, would require an easement. Rob Levesque responded that the easement would be included on the plans after approval of the Definitive Subdivision Plan.

As there was no further comment at this time, Chair Hutchison inquired if there was a motion to continue the Public Hearing to next Monday to discuss aspects of application including the traffic assessment study and the definitive subdivision plan itself.

Motion: Vice-Chair Mulvaney moved to continue the Public Hearing to June 22, 2020 at 6:45 PM. Clerk Brown seconded the motion Four (4) out of four (4) voting members voted in favor of the motion by roll call. Member Therein was not a voting member as he was elected to the Planning Board after the opening of the Public Hearing.

The regular meeting reconvened at 9:18 PM.

Respectfully Submitted,
As Approved
Colleen Canning, Senior Clerk Planning and Conservation

Appendix

Document	Document Location
May 20, 2020 email from Chair Hutchison continuing the Public Hearing to consider the Definitive Subdivision Plan and Stormwater Management Plan for the proposed North Pole Estates Subdivision	Planning Files
Guidelines/Protocols for Planning Board Virtual Hearings	Planning Files
June 10, 2020 Letter from the Board of Health regarding the proposed North Pole Estates Subdivision	Planning Files
Google Form submission from Neva Tolopko, South Hadley resident, for the June 15, 2020 Public Hearing	Attached
Google Form submission from Robert Pleasure, South Hadley resident, for the June 15, 2020 Public Hearing	Attached
June 7 and June 8, 2020 Email from Brenda Griffin, South Hadley resident, regarding potential impacts of the propped North Pole Estates Subdivision	Attached
June 11, 2020 letter from Al Werner, Mount Holyoke College professor, regarding potential impacts of the North Pole Estates Subdivision	Attached
June 11, 2020 Email from Robert Schwartz, South Hadley resident, regarding excavation at the site of the proposed North Pole Estates Subdivision	Attached
March 6, 2020 legal memorandum in opposition of the proposed North Pole Estates Subdivision	Attached
Google Form Submissions from Nate Therien, South Hadley resident for the June 15, 2020 Public Hearing	Attached
Google Form submission from Jacqueline Dupre, South Hadley resident, for the June 15, 2020 Public Hearing	Attached
March 5, 2020 Weston and Sampson Peer-review report	Planning Files

March 16, 2020 applicant responses to Weston and Sampson peer-review	Planning Files
April 29, 2020 Weston and Sampson's responses to applicant response of peer-review	Planning Files

June 15, 2020 Public Hearing - North Pole Estates

South Hadley Planning Board will resume the public hearing on North Pole Estates on June 15, 2020 with the focus of that session being on the Applicant's Stormwater Management Plan and the Hydrogeological Assessment Report. Please use this form to sign up to speak and/or submit comments for the June 15, 2020 Public Hearing. (A session planned for June 22, 2020 will focus on the Applicant's Traffic Assessment Study and the Definitive Plan submittal.) Please note these hearings will be held virtually online.

Email address *

Please note the Board's Virtual Hearing Guidelines/Protocols posted at:
<https://southhadley.org/DocumentCenter/View/6633/Guidelines-and-Protocols-for-Virtual-Hearings---2020-06-01> *

Check an acknowledgement that this was noted

Please State Your First and Last Name *

Neva Tolopko

Please State Your Street Address including City/State *

28 San Souci Dr., South Hadley, MA

Do you wish to speak at the public hearing on June 15, 2020 *

Yes

No

You may also submit written comments. Do you wish to submit written comments at this time?

Yes

No

Please state any comments or questions you wish to submit at this time.

I have been working with the Dry Brook Aquifer Alliance Panel who submitted a Memorandum in Opposition to the Planner and Planning Board on March 6, 2020. I would like to speak about the inadequacy of the Hydrogeologic Assessment.

The Hydrogeologic Assessment (HGA) is inadequate as submitted. It does not fully assess impact from known and calculable contaminants, or fully consider site specific conditions that make this site more vulnerable to contamination, and therefore risk to the aquifer and its water quality have not been fully assessed.

Hydrogeologic report was not updated after excavation plans were changed and the author seems unaware of the extent of the excavation or final finished grades.

The Hydrogeologic report did not assess how the extraction of 474,000 cubic yards of sand and gravel will impact transport of contaminants in the recharge area of the aquifer that supply's District 2's water. Removing depth of a natural sand filter will increase the speed at which potential contaminants migrate towards the groundwater aquifer.

The HGA relies only on Title V standards only for the assessment of risk to the water quality, without considering the site specific conditions of Dry Brook Hill. The area is influenced by pumping of the Dry Brook Wells which will influence the transport of contaminants like Nitrate towards the wells (this was also brought up by Weston and Sampson in the Peer Review). Further Nitrogen compounds found in septic system effluents have been found to cause contamination of drinking water, particularly when systems are located in highly porous sandy soils like we have a Dry Brook Hill. Nitrate contamination from 67 homes and fertilizer use for associated lawns alone could add upwards of 5,000,000 mg per day to the site everyday for the life of the subdivision. The impact of this ongoing cumulative nitrate load on our District 2 water quality needs to be understood. Nitrate has known health effects on our children and the general population as levels increase towards the EPA threshold of 10 mg/l.

The HGA indicated that the proposed residential development would eliminate the quarry (& risk associated with that operation), however in the last Public Hearing for North Pole Estates the applicant's representative indicated that the quarry would continue to exist during construction of the road and home sites, and after home sites were available for sale. Thus the quarry operation will continue to be an ongoing risk to the aquifer for the unforeseen future.

For all of these reasons we believe the hydrogeologic assessment to be inadequate.

Other comments or information that the Board should be aware of?

We would like the opportunity to appear consecutively as a panel during the public hearing.

Option 1

This form was created outside of your domain.

Google Forms

June 15, 2020 Public Hearing - North Pole Estates

South Hadley Planning Board will resume the public hearing on North Pole Estates on June 15, 2020 with the focus of that session being on the Applicant's Stormwater Management Plan and the Hydrogeological Assessment Report. Please use this form to sign up to speak and/or submit comments for the June 15, 2020 Public Hearing. (A session planned for June 22, 2020 will focus on the Applicant's Traffic Assessment Study and the Definitive Plan submittal.) Please note these hearings will be held virtually online.

Email address *

-

Please note the Board's Virtual Hearing Guidelines/Protocols posted at:
<https://southhadley.org/DocumentCenter/View/6633/Guidelines-and-Protocols-for-Virtual-Hearings---2020-06-01> *

Check an acknowledgement that this was noted

Please State Your First and Last Name *

Robert Pleasure

Please State Your Street Address including City/State *

10 Jewett Lane, South Hadley, Massachusetts 01075

Do you wish to speak at the public hearing on June 15, 2020 *

Yes

No

You may also submit written comments. Do you wish to submit written comments at this time?

Yes

No

Please state any comments or questions you wish to submit at this time.

Comment 1 on Hydrogeological Assessment Report, Page 8 of the Study: The report states: "A number of the former monitoring wells once used at the quarry site have been destroyed due to quarrying operations, and a number of other wells that could not be located or are not operable are shown on the plan for reference." If the wells were destroyed during excavation of the grandfathered site instead of being decommissioned as required by MA Department of Environmental Protection, then holes in the site leave open pathways for future contamination, which increases the risk of contamination to the groundwater supply. The Hydrogeological Study does not comment, except to note the destruction of the wells and identify the wells by number, depth, date of drilling, and notes approximate locations on a map. That leaves unresolved the danger of contamination through three uncapped wells---wells for which there is nothing in the record as best as we can discern to show proper decommissioning. No explanation has to our knowledge been offered to show that the Hydrogeological Report contended with this issue or attempted to resolve the nature of the continuing risk posed by the destroyed and apparently uncapped, unplugged wells.

Comment 2 on Hydrogeological Assessment Report: .The Hydrogeological Report contains a disclaimer in its "limitations" section that is, for purposes of the Planning Board's deliberations and the Town of South Hadley's needs, is problematic. It reserves that the document cannot be relied upon by third parties and that it was prepared for the client's "exclusive benefit" only. "Client" as a term is not used in the plural in the report. Unless there is some additional reference or engagement letter that we are unable to find, the only client is the Applicant and not other "third parties," presumably including the" Town of South Hadley.

The particular limitation to which we refer follows:

"1. Our report does not present scientific certainties, but rather our professional opinions on the data obtained through our assessment. Our report was prepared for the exclusive benefit of our client. Reliance upon the report and its conclusions is not made to third parties or future property owners. We would be pleased to discuss extension of reliance to third parties through execution of a written contract with such parties."

Clearly, this is not a mere boilerplate qualification. The authors say, in effect, that if third parties do wish to rely upon the report, they would apparently be required to pay an additional fee and presumably wait for any amendments the authors wish to make. This is, of course, inconsistent with the requirement of the Planning Board when it made it clear that the Applicant would be required to bear the cost of the Study for the use we believe of the Planning Board and the Town.

As we have said, it is possible that the authors of the Study regard the Town as a client. But as best as we can determine, that does not appear in the limitations statement. Our counsel, counsel to the Dry Brook Aquifer Alliance, submitted as Exhibit 2 to our Opposition Memorandum, a standard form for the type of certification we encourage the Town's consideration and review and consideration by Town Counsel.

In summary, we believe that even if the shortcomings of the Hydrogeological Report identified by the Peer Reviewer were corrected, the disclaimer would pose an additional hurdle to reliance by the Planning Board and the Town of South Hadley.

Other comments or information that the Board should be aware of?

I am one of a four person group which appears before the Planning Board. We and many others have worked with the Dry Brook Aquifer Alliance which submitted, through counsel, a Memorandum in Opposition to the Application in the Matter of North Pole Estates. We four request the opportunity to present our comments consecutively as if we were a panel, if that meets the Planning Board's needs. On the first day of the hearing, two of us will be addressing matters relating to the Hydrogeological Assessment Report. On the second day of hearing we plan to take up issues pertaining to the Definitive Plan and will submit comments for the second day on the prescribed form and at the appropriate time. We thank the Planning Director and the Planning Board for consideration of our comments and this proposal to present consecutively our comments that are integrated in our Opposition Memorandum and, we trust, in our appearance before you.

Option 1

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Google Forms



Richard Harris <rharris@southhadleyma.gov>

Impact of North Pole Estate development on the south facing slope (toward Bachelor Brook)

BRENDA GRIFFIN

Sun Jun 7, 2020 at 2:32 PM

Reply-To: BRENDA GRIFFIN

To: rharris@southhadleyma.gov, acapra@southhadleyma.gov, smart@southhadleyma.gov

Let me apologize for including all three departments in this communication, but I was unsure of what was appropriate.

I have attended prior public meetings for North Pole Estates (before COVID) and understand there is concern for the Dist 2 water quality and testing/analysis is being done to ensure town water integrity. From listening to the 5/13 Board of Health meeting I understand some testing results are complete.

Are testing results focused on the impact to the Sullivan Lane side of the proposed development?

There is surface ground water to the south (Bachelor Brook side) of my property (228 Hadley St.) and into the conservation area.

Given the amount of historical debris in the vicinity - metal, glass, etc - that perpetually surfaces I'd guess the surface water might not be of pristine quality (though I haven't encountered any deformed frogs). I conjecture there was once a farm/barn in the low lying area as there is a cistern that contains water year around along with evidence of cross bracing.

Regardless of preexisting conditions, for 35 years I've tried to be extremely conscientious about any type of pollution.

> Should I be concerned with potential contamination from large scale development up the hill?

Thank You.

Brenda Griffin
228 Hadley St.



Richard Harris <rharris@southhadleyma.gov>

Impact of North Pole Estate development on the south facing slope (toward Bachlor Brook)

BRENDA GRIFFIN

Reply-To: BRENDA GRIFFIN

Mon, Jun 8, 2020 at 12:52 PM

To: Richard Harris <rharris@southhadleyma.gov>

Cc: Anne Capra <acapra@southhadleyma.gov>, Sharon Hart <shart@southhadleyma.gov>

Good Afternoon,

Thank you for your response. I do have the virtual meeting in my calendar. But, given my inadequate hearing and virtual meeting skills I'm not prepared to participate in a meeting of this import/complexity virtually. (I can't take the time to configure better audio in order to hear/understand what transpires-I'm trying to find out if closed caption is an option. It's also somehow easier for me to find an opportune moment to address a large open meeting in person).

I'd like to obtain one bit of information without having to ineffectively analyze test results:
> Given the hydrology and geography of the area, how far south of the development is there *potential* for pollution?

After the virtual meeting, if I haven't been able to ascertain an answer, would you then be able to advise me where to direct my question.?

Again... thank you.

Brenda Griffin

PS Regardless of the development's impact on an environmentally valuable area, I cannot help but feel overwhelmingly sad about all we keep taking from the natural world.

[2020 Census logo]
2020CENSUS.GOV



Mount Holyoke College

Department of Geology and Geography
50 College Street
South Hadley, Massachusetts 01075-6419
Tel. 413-538-2278, fax 413-538-2239

To: South Hadley Planning Board

From: Al Werner, Professor of Geology, Mount Holyoke College

Re: Comments on the development of Dry Brook Hill

11 June, 2020

Dear South Hadley Planning Board,

I write today to express my concerns regarding the proposed North Pole Estates development. I have taught geology and Ground Water Geology at Mount Holyoke College for the past 32 years. I have (with students) conducted research on the Dry Brook Aquifer (DBA) and I have consulted with the town to understand recharge to the DBA aquifer and to identifying new aquifer possibilities (ie. Hockanum Flats). Lastly, I have worked with the USGS to better understand the origin and the recharge to the DBA. I've reviewed the comments and the responses by Weston and Sampson and find them to be comprehensive and well-founded.

The DBA is an important, high quality water supply for the town of South Hadley capable of yielding a million gallons/day. The aquifer was deposited during deglaciation and is capped by a thick clay layer associated with Glacial Lake Hitchcock. My research and the detailed study by the USGS clearly demonstrates that Dry Brook Hill (DBH) is hydraulically connected to the DBA and modelling by the USGS demonstrates that DBH is a significant recharge area for the aquifer. The town is fortunate to have this comprehensive study – most municipal water supplies are not as well studied! Recharge areas (places where water enters the groundwater system) are often aggressively protected because once contaminated they can't be remediated on decadal time scales. Further, any plan to monitor future water quality in order to detect contamination, is a failed approach because by the time any contamination is detected the damage to the water supply will have already occurred. ***In my opinion, the proposed development poses a fundamental threat to South Hadley's water supply.***

Important things to consider....

Pumping Rate: The recharge modelling is highly dependent on pumping rate – as the town's need for water increases in future years pumping rates will likely increase and recharge from DBH therefore will likewise increase.

Possible Contamination: In my opinion, in addition to the possible contamination discussed in the proposal and the subsequent peer review (e.g. fuel oil, lawn chemicals, cleaners/degreasers), there are many other human-related contaminants that are important to consider. The peer-review mentions synthetic compounds (e.g. PFOA, PFAS etc.) which unlike traditional septic effluent (which degrades with

time), these chemical are considered "forever chemicals" and do not degrade. Further, medical effluent from septic system (estrogen from birth control pills, antibiotics and even microplastics, etc.) are new threats to water quality.

Title 5 standards: The Title 5 regulations exist to ensure that septic systems function properly, do not over-load the surface aquifers and that there won't be adverse interaction between domestic septic systems and a domestic wells –*Title 5 is NOT meant to determine the impact that development-scale septic systems will have on a recharge area for a municipal water supply.*

Stormwater Runoff: The proposed development describes a storm water run-off plan where-by runoff will be collected and directed into an infiltration basin. Of course, this system will work well as a way to deal with surface runoff because DBH is a sand and gravel recharge area and infiltration rates are extraordinarily high. *But, this is precisely the problem, this runoff water (and whatever it has picked up along the way) will for all intents and purposes will be part of the aquifer recharge.*

The town of South Hadley is lucky to have such a high quality water supply within its borders. The Dry Brook aquifer has been a reliable water supply for over a half century because its primary recharge area (DBH) has remained largely undeveloped. Development on (or in) a recharge area introduces chemicals that can and will adversely change water quality – it is not IF but rather WHEN. In my opinion, if the town wants to continue to use the Dry Brook aquifer as it's main water supply it should take definitive steps to protect its known recharge area and not allow development on it. Failure to do this will most certainly require the town to secure another source of water at likely increased expense.

Sincerely,

A handwritten signature in cursive script, appearing to read "Al Werner".

Al Werner
Professor of Geology
Faculty Award for Teaching, 2013



Richard Harris <rharris@southhadleyma.gov>

North Pole development

Robert Schwartz

To: SHPlanBoard@southhadleyma.gov

Thu, Jun 11, 2020 at 11:16 AM

During the pandemic, has Chicopee Concrete done any further excavation? Wasn't there an injunction in force during this time?

Thank you.

Robert Schwartz

7 Ashfield Lane



Richard Harris <rharris@southhadleyma.gov>

North Pole Estates _ Opposition

Denise Presley <denise@presleylawpllc.com>
To: Richard Harris <rharris@southhadleyma.gov>
Cc: Lisa@mtclawyers.com

Fri, Mar 6, 2020 at 12:58 PM

On behalf of the Dry Brook Aquifer Alliance, attached is their Memorandum in Opposition to the North Pole Estates Definitive Subdivision Application w/ Exhibits ...along with a transmittal letter.

--

Denise L. Presley

PRESLEY LAW PLLC

One Boston Place, Ste 2600

Boston, MA 02108

(617) 921-2079

www.presleylawpllc.com

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3 attachments

DBAA_ NO POLE ESTATES OPPO MEMO Transmittal Ltr.pdf
22K

DBAA_ NO POLE ESTATES OPPO MEMO.pdf
164K

DBAA_ NO POLE ESTATES OPPO MEMO - Exhibits 1-7.pdf
963K



Richard Harris <rharris@southhadleyma.gov>

No Pole Estates - Opposition Memo (Correction)

Denise Presley <denise@presleylawpllc.com>

Mon, Mar 9, 2020 at 11:06 AM

To: Richard Harris <rharris@southhadleyma.gov>, Lisa@mtclawyers.com

Please note I understand there is an error on pg 3 of the Memo, section I. line 4 ... instead of 450 cubic yards, it should say 450,000.

--

Denise L. Presley

PRESLEY LAW PLLC

One Boston Place, Ste 2600

Boston, MA 02108

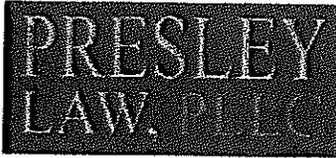
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denise@presleylawpllc.com

VIA Electronic Mail <rharris@southhadleyma.gov>

March 6, 2020

Richard Harris
Town Planner
South Hadley Planning Board
116 Main Street
Room 204
South Hadley, MA 01075

RE: North Pole Estates Memorandum in Opposition

Dear Mr. Harris:

I represent the Dry Brook Aquifer Alliance, which opposes approval of the 'Definitive Subdivision Application' by Chicopee Concrete Service, Inc., dated October 25, 2019, for the Planning Board's consent to subdivide approximately 115 +/- acres of land situated in the Town of South Hadley's Zone II Wellhead Protection Area for the Dry Brook aquifer. Attached, for circulation to the Planning Board is our Memorandum in Opposition with exhibits.

If you have questions or require additional information, please do not hesitate to call me.
Thank you.

Very Sincerely,

A handwritten signature in cursive script, appearing to read "Denise L. Presley".

Denise L. Presley

Enc.

Copy: Lisa L. Mead, Town Counsel
<Lisa@mtclawyers.com>

One Boston Place, Suite 2600
Boston, MA 02108
T 617-921-2079
www.presleylawpllc.com

THE COMMONWEALTH OF MASSACHUSETTS

Before the Planning Board of the
The Town of South Hadley

In the Matter of:
The North Pole Estates
Definitive Subdivision Application,
The Dry Brook Aquifer Alliance submits this:

MEMORANDUM IN OPPOSITION

NOW COMES the DRY BROOK AQUIFER ALLIANCE, and other citizens of the Town of South Hadley, MA having standing to oppose approval of the 'Definitive Subdivision Application' by Chicopee Concrete Service, Inc., dated October 25, 2019, to subdivide approximately 115 +/- acres of land situated in the Town's Zone II Wellhead Protection Area for the Dry Brook aquifer.

INTRODUCTION

The Applicant, Chicopee Concrete Service, Inc. was started in 1952 and provides sand aggregate and concrete services to the construction industry. Its principal place of business is located at 652 Prospect Street, Chicopee, MA 01020 ("the Applicant"). For many years, the Applicant has operated a sand and gravel pit mining enterprise on Lot 43 off Route 47, in The Town of South Hadley ("the Town"). On July 20, 2018, the Applicant filed a request for a special permit to expand its operations for major earth removal activity, which was opposed by residents and many public officials concerned that the project could contaminate the water supply to over 6,000 residents in the Town's Water District 2 and the backup water supply for approximately 11,000 residents in the Town's Water District 1. The Chair of the Town's Conservation Commission opined that the proposed project would have removed almost 2 million cubic yards from the Dry Brook Hill area, which is a geologic feature that charges and

filters water that goes through the aquifer supplying Fire District 2 wells and the Town's Water Protection District.¹

When no permit could be found, the Town's Building Commissioner issued a Cease and Desist Order for the existing mining operation and the Applicant withdrew its application to expand. In a letter dated January 23, 2019 the Applicant promised to work with the Town and Water District 2 "on implementing safeguards for the existing, *grandfathered* earth removal operation."² Nine months later, the Applicant submitted a new proposal, this time to subdivide approximately 115 +/- acres for a mixture of land uses including a 72 acre lot residential development to be known as 'North Pole Estates' and an approximately 30 acre sand and gravel quarry. While a 9 lot division is proposed, only 4 homes (measuring 1- 2.3 acres) would be built in "Phase I". Additionally, the Application seeks approval to build an access road, which would cut through Dry Brook Hill, a Natural Heritage Landscape feature; as well as official recognition of its theory that the existing mining operation is "grandfathered". Further, without much empirical evidence, the author of the Applicant's hydrogeologic study stated that the subdivided residential lots will "eliminate the quarry as a potential future source of contamination".³ However, the Applicant's consultants contradicted that point of view during a Planning Board hearing when they expressed their intent to continue their mining operations while also constructing a residential development.

DISCUSSION

Massachusetts' subdivision control law was enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of cities and towns in which it is, or may be, put into effect by regulating the laying out and construction of ways in subdivisions

¹ Jacquelyn Voghel, *Company Set to Withdraw Gravel Pit Plans in South Hadley*, Daily Hampshire Gazette, Published: 1/25/2019 11:13:34 PM

² Exhibit 1- Letter from South Hadley's Building Commissioner, dated March 13, 2019, ordering the Applicant to stop its earth removal operations, per section 235-136 of the Town's Zoning Ordinances. [See also- Letter, dated January 23, 2019, from Robert M. Levesque, president of R Levesque Associates, written on behalf of Applicant stating that the Applicant wished to withdraw the application without prejudice "based on feedback from multiple town departments and concerned citizens."

³ O'Reilly, Talbot & Okun, Hydrogeological Assessment Study, North Pole Estates, File No. 3186-01-02, October 23, 2019 at p.1.

providing access to the several lots therein, but which have not yet become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. M.G.L. c. 41, § 81-M

Here, the Applicant has proposed a myriad of plans, which do not comply with state law or the Town's bylaws and design standards.

I. The Proposed Subdivision Does Not Comply with South Hadley Subdivision Regulations, Design Standards, Master Plans, or duly enacted Bylaws.

The Application seeks approval of an unnecessary access road cutting through Dry Brook Hill, which is a "Natural" Heritage Landscape Feature.⁴ The proposed path of the trench through Dry Brook Hill is at the approximate steepest grade, at a width of approximately 50 feet, and a proposed grade that would, if approved, allow the removal of approximately 450 cubic yards of earth. There is presently an existing road that has been utilized to provide access to the Applicant's sand and gravel mining operation which is coextensive with proposed house construction. There are alternate routes that do not require such massive earth removal. In addition, the major earth removal attending the plan deeply cut road through Dry Brook Hill has greater potential to cause contamination of the Dry Brook Hill Aquifer. Both Dry Brook Hill and its connected Aquifer are located in Zone II, the recharge zone, of the Water Supply Protection District. Following are the relevant passages from the Design Standards in the South Hadley Subdivision Regulations⁵:

§ 360-33 Open spaces and protection of natural features.

- A. Before approval of a plan, the Planning Board may also, in proper cases, require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air. The park or parks shall not be unreasonable in area in relation to the land being subdivided and to the prospective uses of such land. The Planning Board may, by appropriate endorsement on the plan, require that no building be erected upon such park or parks for a period of not more than three years without its approval.*

⁴ <https://www.southhadley.org/DocumentCenter/View/402/Heritage-Landscape-Inventory-Final-Report-PDF>

⁵ "Town of South Hadley, MA / Division 2: Regulations / Subdivision Regulations, Article VII **Design Standards**

B. Due regard shall be shown for all natural features such as large trees, watercourses, scenic points, historic spots and similar community assets, which, if preserved, will add to the attractiveness and value of the subdivision and the Town. "

Both Dry Brook Hill and the Dry Brook Aquifer are natural features, "...which, if preserved, will add to the attractiveness and value of the subdivision and the Town." *Id.* The extraordinary and unnecessary cut through Dry Brook Hill proposes a massive expansion of earth removal and mining operations, which are specifically identified as potential causes of contamination of the Town's drinking water.⁶ Dry Brook Aquifer is a community asset, which has been specifically identified in South Hadley's Environmental Inventory and currently in the ongoing Master Plan Development.

In the case of the Master Plan work, protection of the Aquifer has been given the highest priority. The Town's Design Standards are not discretionary. Rather, they are intended to support significant architectural and landscape design features that help to define a distinctive character and quality of life in the Town. Indeed, those who willfully violate The Town's standards intended to prevent pollution of the Town's water supply may be subject to the penalties set forth in M.G.L. c. 40§ 39 G. The Applicant has not shown due regard for the principal natural features of the proposed site, which are major community assets. Consequently, the Application does not meet the Design Standards in the South Hadley Subdivision Regulations and should be rejected.

General Bylaws Chapter 245: *Earth Removal Incidental to Construction Activities*

On November 20, 2019, the Members in attendance at a Special Town Meeting approved Article 6 of the Warrant, amending the Town's general by-laws to add a new Chapter 245, "Earth Removal Incidental to Construction Activities." The amendment approved by the MA Attorney General in a letter dated February 20, 2020, limits earth removal from any agricultural, commercial, residential or commercial development to a reasonable and essential amount which is incidental to the primary principal and use to prevent cumulative damage to landscape, aquifer

⁶ DEP SWAP Report for Water District 2 <https://www.southhadley.org/DocumentCenter/View/3856/MassDEP-SWAP-Report-for-District-2---2003-from-District-2-2018-09-10-PDF?bidId=>

and topography and related valuable and nonrenewable natural resources.⁷ Among the purposes regulated by the Town are:

(1) "To permit reasonable removal of earth for agriculture, residential, business, and industrial uses, while also protecting the value of the land within the Town and without imposing undue risk to the general public.

(2) To limit earth removal from any agricultural, commercial, residential or commercial development to a reasonable and essential amount, which is incidental to the primary principal end use.

(3) To require that earth removal operations are conducted in a manner that will cause the least stress and harm to the Town's natural resources.

(4) To prevent detriment to adjacent neighborhoods and abutting parcels from earth removal activities.

(5) To prevent cumulative damage to landscape, aquifer, topography, and related valuable and nonrenewable natural resources, while not unreasonably interfering with necessary, desirable, or creative land uses."

As discussed below, the Applicant's hydrogeological study is replete with examples of how the proposed subdivision would violate this new bylaw, but it suffices to say the earth removal proposed as part of the subdivision is not 'incidental' to primary end use of the residential development. Moreover, it will place the Town's natural resources (water supplies) in grave stress from potential contamination. And we believe, the Town has a duty to act proscriptively to protect the health and safety of future residents to whom the Applicant intends to sell houses built in close proximity to a gravel mining operation.

To be fair, the extent that there is a portion of the Applicant's site that is being lawfully operated, this new general bylaw will not apply. However, to the extent the Building Commissioner determines that the remainder of the site not subject to a special permit or properly permitted sand and gravel operations (i.e. pre-existing non-conforming) is undergoing earth removal and not merely having a subdivision built thereupon, then this new general bylaw would apply to defeat approval of that portion of the site included in the subdivision proposal.

⁷ Exhibit 3 - South Hadley General Bylaws: Part II General Legislation, Ch 245: Earth Removal, dated November 2019 and Approved by the MA Attorney General on February 20, 2020.

II. The Hydrogeologic Assessment Study Cannot Be Relied Upon.

The Hydrogeologic Assessment Study, required by the Planning Board, and authored by O'Reilly, Talbot, and Okum, dated October 23, 2019, ("the Study") was not updated after the subdivision plans were significantly modified by the Applicant on January 20, 2020. The current plans, which were also peer reviewed by Weston & Sampson⁸, show deeper cuts into Dry Brook Hill, and sand and gravel exports above quantities proposed in the original subdivision plans submitted to the South Hadley Planning Board on October 25, 2010. Nevertheless, we submit the following comments on the existing Study.

A. Page 1 of the document indicates that the quarry (i.e. mine or excavation site) has been identified as a future source of contamination to District No. 2's water supply.

The Study opines that the proposed residential development will eliminate the quarry as a future source of contamination. However, in the public meeting on February 10, 2020 the Applicant's representative stated that the mining activity would continue in the "grandfathered site". Furthermore, the Study does not consider that before construction of any homes, a significant amount of material will be mined from the site, now totaling 474,300 cubic yards of sand and gravel. Therefore, this site will continue to be a potential source of contamination for the District No. 2 water supply wells.

The Study does not discuss how removal of 474,300 cubic yards of sand and gravel will impact risk of contaminants migrating through the native soil. Removing depth of the natural sand filter will increase the speed at which potential contaminants will migrate towards the groundwater. The Study also does not discuss how pumping will also affect migration of contaminants towards the well field. Less earth, combined with an increase in demand for water due to an increase of 72 houses will increase potential risk of contamination of the groundwater.

⁸ Exhibit 4- Peer Review of the Definitive Plan of Development for North Pole Estates, Weston & Sampson, M. James Riordan, AICP, LEED, AP, Sr. Project Manager, dated March 4, 2020.

B. Page 8. The Study states, "A number of the former monitoring wells once used at the quarry site have been destroyed due to quarrying operations, and a number of other wells that could not be located or are not operable are shown on the plan for reference."

If the wells were destroyed during excavation of the grandfathered site instead of being decommissioned as required by both BOH and MA-DEP procedures, then holes in the site leave an open pathway for future contamination, which increases the risk of contamination to the groundwater supply... a risk we believe is unacceptable, and ignores 310 CMR 15.00: Septic Systems ("Title 5") standards.

C. Page 9. Section - Proposed Grade Changes. "Thousands of cubic yards of sand and gravel are anticipated to be removed from the Site to support the subdivision development."

Based on the current grading plan C-3 A, the proposed excavation is 474,300 CY, which is "hundreds of thousands of cubic yards" [sic] raises the obvious question of whether the hydrogeologic report author was fully informed about the extent of the excavation required, and whether the Study was submitted before the Applicant calculated and recorded the extent of the proposed earth removal.

D. Page 14. Findings. 10." Development plans call for removing sand and gravel to an elevation of about 220 feet. This would leave over 100 feet of separation distance from septic systems to the water table...."

Current grading plan C-3 A shows elevation at the end of "Frosty Lane" at 213 ft and grade slopes down to 211 ft at the top of the storm water pond. The bottom of the storm water pond is at an elevation of 206 ft. Again, it appears that the author of the hydrogeologic firm has not been made privy to the current subdivision grading plans.

E. Page 14. Findings. 6. "The average nitrate concentration in the Dry Brook public water supply wells is around 1 mg/L. These data do not indicate existing adverse impacts from existing surrounding land uses."

The landscape (finished grades) and potential pollutants will drastically change if the proposed subdivision is approved, and this report does not attempt to quantify the impact to our water supply. Nitrogen Nitrate is not treated via standard septic systems so the load from both septic systems and run-off from fertilizer use will have an ongoing cumulative effect on the water supply. Based on MA-DEP nitrate factors for both septic (135 mg of Nitrate per gallons of septic wastewater, and 440 gallons septic wastewater per 4 bedroom house) and fertilizer (933 mg/day per 1,000 sf lawn, assume 20,000 SF (or .45 acre) lawns per 67 building lots) the number of homes projected (67-72 for the entire subdivision), the aquifer would see on the order of 5,000,000 mg/nitrate nitrogen per day, every day for the future of this development.⁹ Over time the excellent water quality (now observed in Water District 2) will see the impact of this load. The hydrogeologic study should evaluate the impact on the quality of District 2's water supply. This was not done.

F. Page 14. Findings.7. "Under current conditions, the four on-site residences, mining operations, and farm fields where manure may be spread have been identified as potential sources of contamination. Under post development conditions, the mining operations and farm fields would be eliminated."

Again, this states that the subdivision and mining operation would not co-exist, despite the fact that during the Planning Board public meeting on February 10, 2020 the Applicant stated that the mining operation would continue to export material after lots are sold.

G. The document contains a disclaimer (in its "limitations" section) that is, for purposes of the Planning Board's deliberations and the Town of South Hadley's needs is problematic. It reserves that the document cannot be relied upon by third parties and that it was prepared for their client's "exclusive benefit" only.

"Client" as a term is not used in the plural in the report. Unless there is some additional reference or engagement letter that we are unable to find, the only client is the Applicant and not other "third parties" presumably including the Town of South Hadley. The particular limitation to which we refer follows:

⁹ <https://www.mass.gov/files/documents/2016/08/pu/nagg95p.pdf>

"1. Our report does not present scientific certainties, but rather our professional opinions on the data obtained through our assessment. Our report was prepared for the exclusive benefit of our client. Reliance upon the report and its conclusions is not made to third parties or future property owners. We would be pleased to discuss extension of reliance to third parties through execution of a written contract with such parties."

So, even if the foregoing issues in the Study (items A-G above) that make it inapplicable to the current iteration of the Application were brought up to date, the Study would not have reliance value to the Planning Board or to the Town of South Hadley. Clearly, this is not a mere boilerplate qualification. The authors say, in effect, that if third parties do wish to rely upon the report, they would be required to pay an additional fee and presumably wait for any amendments the authors wished to make. This is, of course, inconsistent with the requirement of the Planning Board when it made clear that the Applicant would be required to bear the cost of the Study for the use of the Planning Board and the Town. As we have said, it is possible that the authors of the Study regard the Town as a client. But as best we can determine, that does not appear in the limitations statement. Therefore, to eliminate all doubt, attached hereto as Exhibit 2 is a standard form for the type of certification we believe would ensure that the Town's interests are fully protected by providing a clear mechanism for the Town to rely on the findings in the Study, as intended by the Planning Board.

III. The Proposed Earth Removal is not "incidental".

It is well settled that activities and uses of zoned property may not undercut the plain intent of a town's bylaws, however, activities/ uses that are incidental to an approved use may be permitted. 2 E.C. Yokley, *Zoning Law and Practice* § 8-1 (4th ed. 1978) An accessory or "incidental" use is permitted as "necessary, expected or convenient in conjunction with the principal use of the land." 6 P.J. Rohan, *Zoning and Land Use Controls*, § 40 A. 01, at 40 A-3 (1994). Here, the proposed earth removal of 474,300 cubic yards is not "incidental", as defined *infra*, to the underlying agricultural zoning purposes of the land or to the proposed residential subdivision construction. As such, the Application is subject to the permit requirements of the Town Zoning Bylaw, Chapter 255-84, *Earth Removal, extraction, and fill regulations*.

The seminal Massachusetts case in this area is *Old Colony Council-Boy Scouts of America v. Zoning Board of Appeals of Plymouth*, 574 N.E. 2d 1014, 1016 (1991) There, the plaintiff appealed an appellate court's decision that the excavation of material was not 'incidental' to

construction and maintenance of a cranberry bog and, therefore, the proposed excavation of 460,000 cubic yards over a two and one-half year period did not fall within an exception to a special permit requirement that allowed for excavation incidental to and reasonably required in connection with construction of the approved use. The Court affirmed the lower court's decision and held: "The judge was correct in upholding the board's denial of the special permit... The campsite was subject both to the zoning requirements of a "Rural Residential District" and the more stringent requirements of an "Aquifer Protection District." In the latter, § 401.17(F)(1)(j) prohibits: "The mining of land except as incidental to a permitted use; such as cultivation of cranberries."

Similarly, in *Harvard, Town of v. Maxant*, 360 Mass. 432, 438, 275 N.E. 2d 347 (1971), the issue was the amount of earth removal purportedly to make space for a private landing airstrip. The Court approvingly cited the *Henry* analysis (infra): "The word 'incidental' as employed in the definition of accessory use incorporates two concepts. It means that the use must not be the primary use of the property but rather one which is subordinated and minor in significance. Accessory use must also incorporate the concept of a reasonable relationship with the primary use." Here, the Application seeks to subdivide the property for a residential development alongside sand and gravel mining operations. Since the latter is inconsistent with the former, one can only conclude that the net effect of the volume of earth to be removed, the duration of the project, and the scope of the removal project are inconsistent with the character of the existing zoning and/or the proposal for a zoning variance.

The definition of the term "*incidental*" in zoning bylaws was again addressed squarely by Massachusetts' highest court when it held that the removal of 300,000 to 400,000 cubic yards of gravel to establish a 'cut your own Christmas tree farm' was not "incidental" to the underlying agricultural or horticultural use of the 39 acre plot of wooded land that had been subject to a M.G.L. ch.61 forestry management plan. The Court said: "The proposed gravel removal project is a major undertaking lasting three or four years prior to the establishment of the Christmas tree farm. That project cannot be said to be minor relative to a proposed agricultural use nor is it minor in relation to the present operation. Nor can the quarrying activity be said to bear a reasonable relationship to agricultural use. [*Jackson v. Building Inspector of Brockton*, 351 Mass. 472 (1966) (construction of new building to operate agricultural machine on farm in residential district was reasonably related to farming activities and thus permitted under zoning

ordinance).] 'We conclude that the net effect of the volume of earth to be removed, the duration of the project, and the scope of the removal project are inconsistent with the character of the existing and intended agricultural uses.'" *Henry v. Board of Appeals of Dunstable*, 418 Mass, 841, 845, 641 N.E. 2d 1334 (1994)

Likewise, the Applicant's proposal should be rejected because granting it would render the general rule requiring a permit meaningless. Indeed, quoting *Henry* "We conclude the special permit was properly denied because, "[t]o hold otherwise would be to allow the statutory exemption to be manipulated and twisted into a protection for virtually any use of the land as long as some agricultural activity was maintained on the property. The [town's] zoning power would thus be rendered meaningless. The Legislature cannot have intended such a result when it created a protected status for agricultural purposes." *Id* at 847.

As supported by the foregoing case law, considering the scope of the earth removal proposed, it's obvious that this amount of earth removal is not merely incidental to a permitted use. Moreover, considering the factual background and the Applicant's course of action ...which began with an unsuccessful and ultimately abandoned proposal for a special permit to expand its sand and gravel mining in an area encompassing virtually all of Zone 2 (the recharge zone) of the WSPD, the limited exception for earth removal /excavation incidental and connected to a permitted use should not be allowed to permit this proposal since to do so would permit the exception to override the general rule requiring a permit. Indeed, an inherent contradiction in the subdivision Application is that it seeks to alter an existing use while maintaining it at the same time.

IV. The proposed earth removal covers an area extending beyond the Applicant's "grandfathered" Sand and Gravel Mining Operation

The Applicant seeks approval of a subdivision of parcels that it asserts is a "grandfathered" pre-existing non-conforming use. However, the subdivision, if approved, will alter the pre-existing non-conforming use and is thereby subject to the Special Permit Procedure required by Chapter 255-7 of the South Hadley Zoning Bylaws. Moreover, the Applicant asserts that it plans to maintain its existing sand and gravel mining operation in the same area that it is conducting subdivision development and planned housing construction. The proposed initial work on the project will be located in ground zero of the "grandfathered" sand and gravel mining operation. The conduct of both simultaneously, or the substitution of subdivision development over part of

the area exclusively cannot help but alter the pre-existing non-conforming use. The Zoning Bylaws speak to this very proposal and require a special permit. The Applicant has not sought a special permit as required. Indeed, in this case, once the pre-existing non-conforming use is altered by the subdivision, it cannot be re-established.¹⁰ In other words, if the Applicant were to be successful in its subdivision application, the proposed earth removal would alter its asserted “grandfathered” mining operation such that it could not comply with M.G.L. 40A § 5 or 6. Both provide that pre-existing nonconforming uses may only be extended or altered upon a finding by the special permit granting authority designated by a bylaw provided that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Moreover, Applicant has provided no evidence that its mining operation is “grandfathered” in compliance with M.G.L. 40A § 5 or 6. See also, *Bryne et al. v. Town of Middleborough*, 364 Mass. 331 (1973)

V. The Application is Incomplete

The Application does not address important matters that we believe should be addressed prior to any consideration of subdivision approval. For example, the Applicant has seemingly ignored compliance with The Forest Cutting Practices Act, M.G.L. CH 132, §. 40-46 (“the Act”) and from what we can tell the proposed subdivision would not be exempt. Specifically, the Act regulates commercial cutting of a volume of trees >25,000 board ft or 50 cords ... pursuant to an approved forest cutting plan.¹¹ Satellite photos of the proposed subdivision site show that many acres are wooded,¹² thus clear cutting would raise concerns about increased flooding hazards, which were considered by a Town Committee with recommendations set forth in their 2016 draft report that included Sullivan Lane as one of the streets of concern.¹³

While the Applicant’s hydrogeologist did perform a routine data base search of federal and state environmental records, there is still a very real possibility that data gaps exist from the incompleteness of the activities. For example, the Application simply states that the Applicant is

¹⁰ Exhibit 5- Relevant sections of Chapter 255-7 of the South Hadley Zoning Bylaws.

¹¹ See: <https://www.mass.gov/files/documents/2018/01/22/302cmr16.pdf>

¹² Exhibit 6- (Aerial Photos of water aquifer, water overlay, potential contamination sites)

¹³ Exhibit 7- (The Pioneer Valley Planning Commission , *South Hadley Hazard Mitigation Plan Update*, March 9, 2016)(Summary)

“unaware” of any unique wildlife or flora on the site. It is likely that within such a large assemblage of parcels of wooded land exists the habitat of a myriad of wildlife that would be displaced. The Application does not indicate that the U.S. Fish and Wildlife Service (or the designated State Agency) has been asked to review whether the proposed earth removal, forest clear cutting and/or construction will adversely affect endangered or threatened species or critical habitat. Therefore, at this point, the Town has no way of knowing whether the risk is acceptable. The National Wildlife Coordinating Group defines ‘unacceptable risk’ as a level of risk as determined by the risk management process which cannot be mitigated to an acceptable safe level.

Moreover, the Applicant has requested that the Planning Board waive a several threshold review documents, including a topographical map and a mylar (subdivision plat), which is essential to the Town’s informed review of the Application. Additionally, as a condition precedent to any subdivision approval, the General bylaws require Building Commission approval (including the excavation plans). It doesn’t appear that has occurred.

CONCLUSION

In light of the foregoing information, we believe that the Planning Board has the authority and a duty to disapprove the entire application. Given the serious material threat to the water supply of thousands of South Hadley’s residents, the inherent merit of our belief that irreparable harm would result from approving the Applicant’s subdivision proposal, and the fact that any injury to the citizens of South Hadley would last for decades to come (for which there is no genuine remedy in equity or at law) clearly outweighs any potential harm to the Applicant.

Respectfully submitted,
The Dry Brook Aquifer Alliance
Through Its Attorney,

/s/ _____

March 6, 2020

Denise L. Presley

BBO No. 651332

EXHIBIT 1

March 13, 2019

Jason Ouellette
C/o Chicopee Concrete Services
652 Prospect Street
Chicopee, MA 01020

Dear Mr. Ouellette,

Thank you for your invitation to inspect Chicopee Concrete Services' gravel mining operation located in the Town of South Hadley; I truly do appreciate the offer. However, since no evidence of a valid permit for major earth removal operations at the site can be found, I have no authority to perform any inspections associated with such activities and, therefore, have decided to decline your offer. Furthermore, until a valid earth removal permit issued by the South Hadley Building Department is found or otherwise obtained, I must order Chicopee Concrete Services to cease all earth removal operations effective immediately. Per §255-136 of South Hadley Zoning Ordinance, you have the right to appeal this decision and order.

It is my sincere hope that the recent challenges regarding the status of Chicopee Concrete Services' gravel mining activities are quickly resolved to the satisfaction of all involved.

Sincerely,



David A. Gardner, CBO
Building Commissioner
South Hadley, MA

EXHIBIT 2

CERTIFICATION

[Identify Client, Report, Date]

I understand that my environmental review will be used by multiple departments and commissions of The Town of South Hadley, Massachusetts (the "Town") and the Commonwealth of Massachusetts to approve North Pole Estate's application (the "Applicant") for subdivision of [list PIN nos.] and it is being reviewed in accordance with the Town's bylaws and design requirements, as well as State environmental approval authorities. I certify that my review was in accordance with the said requirements applicable on the date of my review and that I have no financial interest or family relationship with the officers, directors, stockholders, or partners of the Applicant, the general contractor, any subcontractors, the buyer or seller of the proposed property or engage in any business that might present a conflict of interest.

I am under contract for this specific assignment and I have no other side deals, agreements, or financial considerations with the Town or others in connection with this transaction.

I agree that the aforesaid governmental bodies shall be considered Intended Third Party Beneficiaries of all rights conferred to any client as defined in the environmental report.

Signed:

[Author/Project Scientist, License No.]

Date: _____

Warning: M.G.L. c. 267 § 1, provides in part that whoever with intent to injure or defraud, falsely makes, a certificate to a town clerk or any other public officer in relation to a matter wherein such certificate, return or attestation may be received as legal proof shall be punished by imprisonment in the state prison for not more than ten years or in jail for not more than two years.

EXHIBIT 3¹

¹ Section 245.7 A5 was amended on the floor to increase the earth removal of cubic yards from 10 to 100.

South Hadley General Bylaws: Part II General Legislation

Chapter 245: Earth Removal Incidental to Construction Activities

§ 245- 1 Purpose and objectives.

The purpose of this bylaw is to regulate earth removal incidental to construction activities in the Town of South Hadley.

A. In pursuit of this purpose, the objectives of this bylaw include the following:

- (1) To permit reasonable removal of earth for agriculture, residential, business, and industrial uses, while also protecting the value of the land within the Town and without imposing undue risk to the general public.**
- (2) To limit earth removal from any agricultural, commercial, residential or commercial development to a reasonable and essential amount which is incidental to the primary principal end use.**
- (3) To require that earth removal operations are conducted in a manner that will cause the least stress and harm to the Town's natural resources.**
- (4) To prevent detriment to adjacent neighborhoods and abutting parcels from earth removal activities.**
- (5) To prevent cumulative damage to landscape, aquifer, topography, and related valuable and nonrenewable natural resources, while not unreasonably interfering with necessary, desirable, or creative land uses.**

§ 245- 2 Authority.

This bylaw is adopted pursuant to the authority granted under General Laws Chapter 40, § 21, clause 17, and shall be effective Town-wide.

§ 245- 3 Definitions.

AGRICULTURAL EXCAVATION

The process of removing earth or other materials that are necessary and incidental to prepare a site for specific agricultural use.

BOARD

The South Hadley Planning Board.

EARTH

All material normally and naturally composing part of the earth's surface and immediate subsurface, excluding water, including but not limited to, soil, clay, gravel, hard pan, loam, rock, peat and sand.

EARTH REMOVAL PERMIT

A written permit issued by the Board pursuant to this bylaw allowing earth removal subject to conditions.

INCIDENTAL

Meeting all of the following criteria:

- A. Is minor in significance to the primary use of a premises;
- B. Is commonly established as customarily associated with the primary use of a premises;
- C. Is necessary to carry out the primary use of the premises; and
- D. Is minor in its net effect to that of the principal use, based on the amount of material to be removed and the time period over which it is to be removed.

PREMISES

One lot or all abutting lots or parcels which are, or are proposed to be, in the same ownership or use, together with all buildings and structures thereon.

REMOVE/REMOVAL

The severance of any Earth from its natural location, whether or not such Earth is moved from the lot to another location on the same lot or off the lot, by any means, including but not limited to, stripping, excavating, mining or blasting.

RESTORATION

After an earth removal activity is completed, returning the land contours to a safe and usable condition, restoring drainage patterns, and planting appropriate vegetation.

§ 245- 4 Applicability.

This bylaw shall be in addition to any other permits or approvals required by the Town of South Hadley. Nothing in this bylaw shall prevent the application of the South Hadley Zoning Bylaws.

§ 245- 5 Grandfathering.

This bylaw shall not apply to properly permitted sand and gravel operations lawfully in existence on the effective date of this bylaw. Entities operating pursuant to an earth removal special permit under the South Hadley Zoning Bylaw as of the effective date hereof and seeking renewal of an earth removal special permit then in existence shall not be subject to this bylaw.

§ 245- 6 Earth Removal Prohibited.

- A. No person, firm, corporation, or other entity shall excavate and/or remove any Earth from any lot in the Town of South Hadley, unless such activity is authorized by an Earth Removal Permit issued by the Board.

- B. Earth removal is prohibited unless it is: 1) necessary and incidental to a lawful end use for which all local and state permits required by law have been issued, or 2) exempt pursuant to Article 5 of this bylaw.**

§ 245- 7 Conditional Exemptions.

- A. No Earth Removal Permit shall be required for the following activities under this bylaw, provided the activities do not constitute a nuisance or danger to the public and conform to accepted engineering or agricultural practices:**
- (1) The Commissioner of Public Works and his/her agents and employees may perform Earth Removal activities in the performance of their public duties on any public way and on Town property.**
 - (2) Earth Removal incidental to the permitted construction of foundations of buildings, walks, driveways, septic systems or swimming pools, and incidental to the installation of utilities, provided that the quantity of Earth subject to Removal does not exceed that displaced by the portions of construction and installation below finished grade.**
 - (3) Construction of a structure on the premises for which a building permit has been issued, or incidental to the grading and development of contiguous property, and provided that such removal, excavation or addition is limited to the area within a distance not more than 100 feet from the building or improvements authorized under said permit.**
 - (4) Earth Removal incidental to an approved definitive subdivision plan, or an approved business or industrial development plan, in which the amount of Earth subject to Removal does not exceed 5000 cubic yards in one calendar year, if the Earth is transported off the lot. The 5000 cubic yards shall not include Earth Removal which is incidental to the construction of foundations, walks, driveways, septic systems or swimming pools.**
 - (5) Earth Removal incidental to landscaping, and/or clearing, and in which the amount of Earth subject to Removal does not exceed 10 cubic yards per acre of land in one calendar year, if the Earth is transported off the lot, and does not exceed 10 cubic yards per acre of land in one calendar year, if the Earth is transported within the lot.**
- B. The foregoing conditional exemptions shall be subject to inspection, determination, and enforcement by the Building Commissioner.**
- C. The Building Commissioner shall issue a cease and desist order in any case in which the Building Commissioner determines that:**
- (1) the earth removal activity would not be necessary and incidental to an identified lawful principal use, a lawful structure, an approved subdivision road, or lawful utility installation; or**
 - (2) The earth removal activity would be excessive in scope or nature to the foregoing end use or structure; or**
 - (3) Would create unsafe conditions on or off the property; or**
 - (4) Would be a detriment or nuisance to nearby landowners or to the Town in general by reason of noise, dust, vibration, or other objectionable conditions.**

§ 245- 8 Fill.

A statement may be required from a certified professional to verify the source and content of fill material if the Earth Removal Permit is issued for the placement of fill. The analysis of the content of the fill material may be required so as to detect the presence and quantity of hazardous or substandard materials. This analysis shall be conducted by a certified professional hired by the Board at the expense of the applicant.

§ 245- 9 Application.

An application for an Earth Removal Permit shall be in writing. The application shall contain an accurate description of the portion of land on which the excavation will take place, shall state fully the purpose of the excavation, shall include payment of fees established by the Board, and shall include plans drawn by a registered surveyor or engineer. The application shall contain the following information:

- A. The precise location of the proposed excavation as part of the total land area of the subject property;**
- B. The legal name and address of each owner of the property for which the permit is requested;**
- C. The name and address of the applicant and the address which shall be sufficient for any notice required under the bylaw;**
- D. The property lines, names and addresses of all abutters, including those across any way, from the most recent tax list as certified by the Board of Assessors;**
- E. Existing contours at two-foot intervals in the area from which material is to be excavated and in surrounding areas, together with the contours at two-foot intervals below which no excavation shall take place;**
- F. Natural features such as wetlands, the 100-year floodplain, ground cover, surface water and groundwater. Water table elevation shall be determined by test pits and soil borings satisfactory to the Board. A log of soil borings shall be included, taken to the depth of the proposed excavation, congruent with the size and geological make-up of the site;**
- G. A topographical map showing drainage facilities, final grades, and proposed vegetation and trees;**
- H. Dust, erosion, and sediment-control plans for the site and trucks removing earth;**
- I. The amount and cost of proposed restoration materials, and the source from which the applicant intends to obtain them;**

- J. Estimated quantity of material to be removed and topsoil to be replaced and the method to be used, verified by a registered surveyor or professional engineer;
- K. The proposed form of bond and the name and address of the bond issuer;
- L. An estimate of the number of truck trips, location of truck routes, and hours of truck traffic;
- M. Designation on the required plan of any and all proposed phases and the number of cubic yards to be excavated in each, not to exceed 10 acres or 10 cubic yards, whichever is less;
- N. Restoration, reuse and/or revegetation plan; and
- O. Any other information which the Board may require.

§ 245- 10 Hearing and Decision.

An Earth Removal Permit shall be granted only by an affirmative vote of a majority of the Board. Following receipt of an application for a permit for removal of earth from any land and determination by the Board or its designated agent that the application is complete, the Board shall appoint a time and place for a public hearing, not later than 45 days after the receipt of the completed application, notice of which shall be given to the applicant. The Board's decision shall be issued within 45 days of the close of the hearing.

§ 245- 11 Term.

An Earth Removal Permit shall be issued for a period of 1 year. The Board may, in its discretion, grant an extension of an Earth Removal Permit for 6 months beyond the initial period, but no such extension shall be issued unless the applicant has conformed to all requirements of the original Earth Removal Permit.

§ 245- 12 Surety.

The Board shall require as a condition to the granting of the Earth Removal Permit that the applicant furnish a performance bond, or other security, satisfactory to the Board. The minimum amount of any financial security shall be sufficient to cover the estimated cost of reclamation, plus reasonable contingency. The security shall not be released until a Board-approved surveyor or engineer has filed with the Board an "as built" plan and has also certified that the restoration has been completed in compliance with the Earth Removal Permit and the plans.

§ 245- 13 Enforcement and Penalties.

- A. The Board or its designee shall enforce this bylaw and may pursue all available remedies for violations or take any other action relative thereto.**
- B. In accordance with General Laws Chapter 40, § 21, clause 17, penalties for violation of this bylaw shall be: \$50 for the first offense, \$100 for the second offense, and \$200 for each subsequent offense. Each day in which a violation occurs shall constitute a separate offense.**

§ 245- 14 Revocation.

The Board may revoke any Earth Removal Permit which it has issued for good cause, provided that it shall in writing offer to the permit holder an opportunity for a hearing within seven days after the revocation.

§ 245- 15 Severability.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision or phrase thereof.

EXHIBIT 4

MEMORANDUM

TO: Richard Harris, AICP, Director of Planning, South Hadley, MA
FROM: M. James Riordan, AICP, LEED AP, Senior Project Manager
DATE: March 4, 2020
SUBJECT: North Pole Estates Peer Review

Introduction

Weston & Sampson was requested by the Town of South Hadley (the Town) to provide a review of the Definitive Plan of Development for North Pole Estates. The project site is partially developed as a gravel and sand excavation operation, which was originally opened in the 1940s. A Special Use Permit application was submitted in 2018 to expand the excavation operation to include other portions of the project site but was withdrawn in January 2019. A Preliminary Subdivision Plan was submitted for the site in March 2019 and approved April 29, 2019 with a variety of conditions.

This letter report summarizes the results of our review. The letter report is prepared pursuant to our February 11, 2020 contract with the Town, which specifies consideration of the conditions of the Preliminary Subdivision review and requirements under specific Town Bylaws. Requirements of specific Town Bylaws are discussed further under the Peer Review section of this letter report.

In general, materials that we reviewed to prepare this letter report include those submitted with the Definitive Plan. We collected these materials from the Town's website.

As part of our peer review scope of work, we conducted a site visit with representatives of the Town and the applicant's engineer. At that time, we requested additional materials for the transportation elements of our review. As of the writing of this report, we have yet to receive these materials.

Overview of the Proposed Development

North Pole Estates is proposed as a residential subdivision of nine units, but which will eventually be built out to 67 – 72 lots through unspecified subsequent phases in the Agricultural Zoning District and within the Water Supply Protection Overlay District.

The subject property lies within the MassDEP designated Zone II of the Fire District 2 Public Water Supply. The project includes improvements for the subdivision including, but not limited to, roadways, water lines, other utilities, and a Stormwater management system. As part of the application submittal, the applicant has requested six specific waivers from submittal and content requirements under Sections 360-20A, 360-21A, 360-21B(8), 360-21B(16), and 360-21B(21) of the Subdivision Regulations as detailed in the application; therefore, we have provided no comments related to these sections of the Town Bylaws. The subject properties are located along the west side of Hadley Street (aka State Route 47) and along Sullivan Lane and are identified on Assessor's Map Number #54 as Parcels #15 & #20 and on Assessor's Map Number #56 as Parcels #20, #26, #42, #43, #43A, #104, #109, #112, and #121.

Peer Review

This peer review is provided under the following general review topics:

- Stormwater
- Hydrogeology
- Transportation
- Definitive Plan Review

Our review provides a section for each area of concern. The sections are structured include a listing of review standards pursuant to our scope of work, our findings for the review standard, and then additional review findings. Findings are numbered sequentially under each review topic (i.e., stormwater, hydrogeology, etc.). The hydrogeology section of our letter report also includes a general discussion of the project site hydrogeology to provide context for our review comments.

Stormwater

Review Standards for Stormwater

We reviewed the North Pole Estates Definitive Plan pursuant and limited to the following review standards for stormwater:

- A. Identify each of the design criteria listed in Section 200-20 and provide an explanation as to whether and how the stormwater elements of the application meet each of the criteria.
- B. Provide a thorough assessment as to the submittal's conformity with the other Performance Standards identified in Section 200-17, 200-18, and 200-19 of the Stormwater Management Bylaw.
- C. Identify each of the standards of the Massachusetts Stormwater Management Standards as promulgated by the Massachusetts DEP with an explanation as to whether and how the Report and the Plan meets the applicable standards.

Review Findings for Stormwater

Our findings are provided below in the order of the review standards listed above:

Section 200-20

We reviewed the applicants Definitive Plan submission pursuant to requirements of Section 200-20 of the Town's Bylaws and find that it to be prepared in conformance with the stormwater elements except as provided below:

1. Section 200-20(E): *The applicant shall consider public safety in the design of any stormwater facilities. The banks of detention, retention, and infiltration basins shall be sloped at a gentle grade into the water as a safeguard against personal injury, to encourage the growth of vegetation and to allow the alternate flooding and exposure of areas along the shore. Basins shall have a 4:1 slope to a depth two feet below the control elevation. Side slopes must be stabilized and planted with vegetation to prevent erosion and provide pollutant removal. The banks of detention and retention areas shall be designed with sinuous rather than straight shorelines so that the length of the shoreline is maximized, thus offering more space for the growth of vegetation.*

The proposed infiltration basin does not have outlet controls from which to measure "a depth two feet below the control elevation." The overall depth of the basin is 4-feet as measured from the top edge of the basin to the bottom. Side slopes are 4H:1V which conform to the standard and may be sufficient to prevent safety issues associated with entrapment. The board may wish to consider fencing or other public safety measures around the basin.

Section 200-17, 200-18, and 200-19

We reviewed the applicants Definitive Plan submission pursuant to requirements of Section 200-17 to 200-19 of the Town's Bylaws and find that it to be prepared in conformance with the stormwater elements except as provided below:

1. Section 200-17: *To prevent the adverse impacts of stormwater runoff, the stormwater performance standards in this Article VI must be met at new development sites.*

To prevent the adverse impacts of stormwater runoff, the Town requires that new developments must adhere to Massachusetts Stormwater Management Standards. Section 200-18(A) of the Town's bylaws specifies this requirement. Our comments related to the Massachusetts Stormwater Management Standards our provided below, under our findings related to Section 200-18(A).

2. Section 200-18 (A): *Projects must meet the standards of the Massachusetts Stormwater Management Standards as promulgated by the Massachusetts DEP.*

The Massachusetts Stormwater Standards are established in Volume 3 of the Massachusetts Stormwater Handbook. There are 10 standards, which include:

- *Standard 1 - No new stormwater conveyances may discharge untreated stormwater to or cause erosion in wetlands or water of the Commonwealth*

Untreated stormwater is not being discharged to wetlands or waters of the Commonwealth. Much of the stormwater is being retained onsite. This standard has been met.

- *Standard 2 - Peak Rate Attenuation*

Peak discharge rates have been attenuated based upon the applicant's analysis using TP-40 rainfall data, which meets the standard. Though not required by regulatory standards, we have included recommendations for additional analysis. This is discussed further herein.

- *Standard 3 – Recharge*

- *Soil Evaluation* – The applicant has provided an evaluation of soils and groundwater conditions within the proposed infiltration basin area by a licensed soil evaluator, and the design has been based on that evaluation.
- *Required Recharge Volume* – The applicant has computed the required recharge volume for the project.
- *Sizing* – The applicant has appropriately sized a stormwater BMP (infiltration basin) that collects the required recharge volume.
- *72-hour Drawdown Analysis* – The applicant has demonstrated the proposed infiltration basin meets the 12-hour drawdown requirement.
- *Capture Area Adjustment* – The applicant has appropriately applied a capture area adjustment factor to the required recharge volume.
- *Mounding Analysis* – The applicant has adequately demonstrated that seasonal high ground water is not present within 4-feet below the bottom of the proposed infiltration basin, therefore a mounding analysis is not required.

- *Standard 4 - Required Water Quality Volume.*

The applicant has provided calculations for required water quality volume and has designed the proposed infiltration basin with sufficient capacity to capture this volume.

- *Standard 5 - Land Uses with Higher Potential Pollutant Loads*

The applicant has stated that the proposed land use is not subject to a higher potential pollutant load. We agree with that assessment.

- *Standard 6: Standards concerning discharges within Zone II, Interim Wellhead protection areas of public water supplies, and stormwater discharges near or to any other critical areas*

The site is situated within a Zone II/Water Supply Protection Overlay District. The applicant has implemented the required pretreatment methods and water quality volume computation approach required for discharges to such areas.

- *Standard 7: Computations demonstrating that peak rate attenuation, recharge, and water quality treatment is provided to maximum extent practicable for redevelopment projects.*

The applicant appears to have fully complied with the standards.

- *Standard 8: Development of an Erosion and Sediment Control Plan*

The applicant has shown erosion and sediment control measures on their plans and has included a comprehensive erosion and sediment control plan as part of their stormwater report.

- *Standard 9: Operation and Maintenance*

The applicant has provided an operation and maintenance plan for stormwater best management practices.

- *Standard 10: Illicit Discharge Compliance Statement*

The project does not discharge to an municipal separate storm sewer system, nevertheless the applicant states their intent to provide an illicit discharge compliance statement prior to discharge of stormwater to post-construction BMPs. The board may wish to adopt this as a condition of approval for the project.

The Massachusetts Stormwater Handbook indicates that proponents of projects subject thereto must consider environmentally sensitive site design and low impact development (LID) techniques to manage stormwater.

The Massachusetts Stormwater Standards list specific credits for LID that the applicant may pursue for compliance in lieu of installing dedicated stormwater management BMPs. While we do not necessarily concur with each of the assertions in Appendix I of the applicant's submission, we do understand from item 6 of Appendix I that the applicant is not seeking LID credit. We find that the applicant has complied with standards 3 and 4 and is, therefore, not required to achieve LID credit standards.

3. *Section 200-18 (B): When the proposed discharge may have an impact upon a sensitive receptor, including streams, storm sewers, and/or combined sewers, the Planning Board may require an increase in these minimum requirements, based on existing stormwater system capacity and standards of other Town boards, including, but not limited to, the Board of Health and the Conservation Commission.*

To our knowledge, the Town has required no increase in the minimum standards. Stormwater quality treatment at the proposed development is to be primarily provided by a single infiltration basin. We find the selected best management practice to be appropriate for the proposed project. The proposed stormwater infiltration system is sized and designed in accordance with MassDEP standards; therefore, we find the applicant has satisfied this requirement.

Section 200-19

We reviewed the applicants Definitive Plan submission pursuant to requirements of Section 200-19 of the Town's Bylaws and find that it to be prepared in conformance with the stormwater elements except as provided below:

4. *Section 200-19 (D): All stormwater management facilities shall be designed to provide an emergency overflow system and incorporate measures to provide a nonerosive velocity of flow along its length and at any outfall." Likewise, reference Section 200-20(A)(7): "Provisions shall be made for safe overflow passage, in the event of a storm which exceeds the capacity of an infiltration system.*

Much of the proposed development is designed to discharge into an infiltration basin as its final destination. This appears to be a result of the fact that the grading of the development has been designed so as to place end of the proposed roadway and Lots 2, 3 and 4 at elevations approximately matching current grades of what is presently an active sand quarry. As such, if this basin were to theoretically fail to allow infiltration to occur, stormwater would have no other place to go other than to fill the low-lying areas of lots 2, 3 and 4.

Notwithstanding the issues raised above, the applicant has provided test pit data indicating that much of the project site is underlain by sand and gravel material, including the proposed infiltration basin. The basin is located within a low-lying area of an existing sand and gravel pit. It is our understanding that the pit has not experienced flooding in the past despite being situated in a low-lying area. Test pits indicated that there was no evidence of seasonal high groundwater within at least ten feet below the proposed elevation of the stormwater basin. Based upon the information presented for this specific site, it appears that the omission of an overflow system from the infiltration basin is an acceptable deviation from the standard.

It is noted that the infiltration basin design calls for the installation of "loam and seed" in its bottom. The applicant should provide evidence that the proposed loam mix will provide for infiltration at a rate assumed by the stormwater report or shall consider an alternative surface treatment for the bottom of the basin that accomplishes this.

Additional Comments for Stormwater

Additional comments related to stormwater are provided below:

5. Page 3-1

The report indicates that TP-40 rainfall data was used for purposes of the proposed stormwater system analysis. This data source is acceptable for use based upon the current Massachusetts Stormwater Handbook. Notwithstanding its current regulatory status, this data source is outdated in comparison with other publicly available data sources including the Northeast Regional Climate Center (Cornell University) and NOAA Atlas 14. Furthermore, it is our understanding that the Massachusetts Department of Environmental Protection (MassDEP) intends to publish updates to its standards which will effectively retire the use of TP-40. We recommend that the applicant's engineer review these newer data sets and take them into consideration for purposes of design.

6. Sheet D-2

The Standard Precast Concrete Catch Basin detail calls for a "LeBaron 'Snood' type or equal flip-up type hood". To the best of our knowledge this product does not exist. The applicant is asked to specify a hood that complies with MassDEP standards.

7. Section 360-44 (B)(3): Discharge of stormwater shall be either into an existing, adequate storm system or the nearest natural watercourse.

The majority of the proposed development discharges stormwater to an infiltration basin within the site, not to an existing storm system or natural watercourse; however, we find the proposed infiltration system to be acceptable for the proposed layout in the definitive plan submission. (See the review related to Section 200-19, above.) The applicant should, however, note that the allowance of this approach may be problematic for future phases development that may add impervious surface and propose vulnerabilities that are not being considered under this review.

Hydrogeology

Review Standards for Hydrogeology

We reviewed the North Pole Estates Definitive Plan pursuant and limited to the following review standards for hydrogeology:

- A. Ensure the submittal was prepared in accordance with accepted professional practices.
- B. Ensure that all statements and conclusions related to hydrogeology in the Applicant's submittal including but not limited to the Applicant's Development Impact Statement accurately reflect the analysis and conclusions of the Hydrogeology Report.

General Discussion of Hydrogeology

According to the O'Reilly, Talbot & Okun (OTO) Hydrogeological Assessment Study (HAS), the approximately 115-acre Development (consisting of twelve contiguous tax parcels) at full buildout will consist of about 72 new homes, with each residence located on a 1 to approximately 2.3-acre parcel, with a comprehensive coverage of about 85.5 acres. The remaining acreage of the Site will be developed

for roads and stormwater retention features, and set-aside open space (e.g., wetlands, river shoreline). Each home will be developed with an individual septic system for domestic wastewater disposal purposes, and water service provided by the local public water supply (South Hadley Fire District 2). Currently, an approximately 30-acre, active sand and gravel quarry occupies the southern portion of the Site with a reported current finished bottom elevation of about 220 feet above mean sea level (ft amsl). As part of the proposed development activities, excavation and grading will be required. These activities will reportedly result in the excavation and removal of over 400,000 cubic yards of sand and gravel from the site.

The two public water supply wells which comprise the Dry Brook Wellfield are located about 500 feet north of the northernmost boundary of the Development Site, and about 1,200 feet north of the existing sand and gravel quarry. According to the available information, Wells 1 and 2 were installed circa 1963 and 2004, respectively, and were rated at the time of completion at corresponding yields of 980 gallons per minute (gpm) and 1,050 gpm. South Hadley Fire District No. 2 uses Wells 1 and 2 as alternate supplies, with the average system pumping rate ranging between 300 and 500 gpm, contingent upon demand. These wells derive groundwater from a sequence of primarily glacially deposited sand, and sand and gravel, that is may be locally overlain and underlain by low-permeability units of clay, silt, clay and silt, and till. Naturally occurring recharge to the aquifer is derived primarily from infiltrating precipitation and snowmelt runoff, though under significant pumping conditions from nearby wells (e.g., Well #'s 1 and 2), it may also be derived from the nearby Connecticut River by way of induced infiltration.

Based on the 2004 USGS study and driller logs for the Dry Brook Wells, they both tap the same sand and gravel unit which underlies the development site and that is currently part of the material being extracted at the on-site quarry. In the wellfield area, the unit is only about 20 feet thick and covered by close to 100 feet of low permeability clay with varying amounts of silt and fine sand (i.e., a confining layer), while the same unit exploited by the Dry Brook Wells is over 200-feet thick (where not already removed by quarrying) in the central portion of the Site (aka Dry Brook Hill), with no evidence of any hydrogeological significant confining layer.

Water quality information available for the South Hadley Fire District No. 2 public water supply indicate that the water pumped from both wells currently meets MassDEP drinking water standards. This condition combined with the ability of Wells 1 and 2 to meet the system demands, has been recognized and documented by South Hadley, the MassDEP, and the USGS. As such, a Water Supply Protection Overlay District (WSPOD), Wellhead Protection Area (WHPA) with corresponding Zones I and II, and Area of Contribution (USGS) have been delineated with respect to protect the Dry Brook Wellfield, with specific concerns have been noted to be directed towards the Dry Brook Hill area as: a significant source of recharge to the Dry Brook Wellfield; and an area requiring focus on maintaining compliance with the current drinking water quality standards and protection of the aquifer. Major activities and land uses associated with the Site and proposed Development that have been identified as being of potential concern to the Dry Brook Wellfield include sand and gravel quarrying and residential development that involves use of individual septic systems and on-site management of roadway (stormwater) runoff.

Review Findings for Hydrogeology

In reviewing the HAS, we focused on the adequacy and applicability of OTO comments and conclusions relative to the local hydrogeology, the current site-specific and proposed Development conditions, the MassDEP regulations and guidelines, and the concerns reflected by South Hadley. Based on our review of the HAS, the following, more relevant comments, and our responses are provided as follows:

1. The Zone II WHPA and WSPOD for the Dry Brook Wellfield, which were based on typical usage (300 gpm) and individual rated yield capacity (980 and 1,050 gpm, respectively), encompass a portion to most of the Site (Dry Brook Hill). Based on its review of the related USGS study, OTO indicates in the HAS that "the Dry Brook Hill area is important to the protection of the water quality in the Dry Brook Wells because the area contributes water to the wells under various simulated (i.e., pumping) conditions." With this said, the HAS acknowledges the significance of the Site in protection of the South Hadley Fire District No. 2 wells, yet only addresses the potential for impact from a former underground storage tank (UST) used to store #2 fuel oil at the quarry facility, and nitrogen loading from septic systems and road salt from de-icing activities as being potential sources of contamination related to the proposed Development. The HAS does not address the potential for impacts on groundwater quality which may result from other existing activities and land use associated with the proposed Development. A list of these activities and basis for concern are provided in the 2003 Source Water Assessment and Protection Program (2003 SWAP)¹ and include: fuel and oil spillage, and hazardous substances (e.g., antifreeze, degreasing solvents) associated with the operation and maintenance of quarrying equipment throughout the quarry area; and fertilizers, herbicides, cleaners, degreasers, and biosolids residuals associated with the use of domestic wastewater disposal activities. Furthermore, at the time of the SWAP's release, contaminants currently known to be related to domestic wastewater and found locally in groundwater supplies were not identified (i.e., emerging contaminants). The potential for the presence of these potential contamination concerns and measures to deal with these contaminants needs to be addressed for the HAS to be considered adequate. It should be noted, that planning board minutes from 2019 indicate that Chicopee had proposed the installation and sampling of monitor wells at the Site. To our knowledge, no monitoring wells have been installed. Given the hydrogeologic significance of the Site to the Dry Brook Wellfield, such measures should be considered.
2. The HAS acknowledges that the areal extent of the WHPA Zone II directly increases and decreases with pumping rate at the corresponding Dry Brook Wellfield. However, given the current use of these wells within a range of 300 to 500 gpm, the smaller area is assumed to be prevalent, which also means that the contributing amount of recharge is higher from the

¹ The 2003 SWAP can be downloaded from the following webpage: <https://www.mass.gov/service-details/the-source-water-assessment-protection-swap-program>

Site (i.e., recharge from the Connecticut River is minimal). This means that the proposed Development could have much larger impacts on water quality at the wells, because it would represent a significantly greater proportion of the area of contributing recharge. As such, evaluation of impacts associated with this change and the variety of potential contaminants needs to be addressed by the HAS in order for it to be considered adequate. Given that the thickness of aquifer materials at the Site is proposed to change with the proposed Development, the impact on the recharge contribution and mechanisms should be addressed by the HAS relative to the percentage of contribution to the Dry Brook Wells. The significance of such impact at lower pumping rates need to be addressed relative to the potential for a resulting shift in the amount of groundwater that may be derived from the Connecticut River.

3. According to the HAS, the proposed use of individual septic systems at the Development will meet the applicable Title V standards. It should be noted that the Title 5 standards are focused on nitrate as a contaminant of concern, and uses a generic approach which may be adequate for situations where the underlying groundwater resources are not being influenced by nearby public community supply wells which can affect the fate and transport of these contaminants. As discussed above, there are other contaminants besides nitrate (i.e., those listed in the SWAP) that the HAS needs to address as part of its assessment of the potential for the existing site conditions and proposed Development conditions to impact the Dry Brook Wells. This assessment should include projections of the long-term persistence of these contaminants and potential for travel through groundwater. In addition, the USGS study indicates that the pumping of the Dry Brook Wells does influence groundwater levels (i.e., drawdown observed at remote observation wells) in the sand and gravel aquifer unit underlying the Site (reported radius of influence of 2,300 feet). The distribution of groundwater levels measured at on-site wells by OTO as part of the HAS also corroborates that groundwater flow direction is naturally towards the Dry Brook Wells (no information regarding the status of pumping of these wells at the time of measurement is provided in the HAS). Based on these observations, OTO should be able to address the potential, and if applicable, travel time for such contaminants to reach the wellfield. Further discussion to the starting typical loading concentration of nitrate and concentration at the appropriate distance (e.g., dilution factor) relative to a resulting minimum increase at the Dry Brook Wellfield should also be addressed. Given the reliance on groundwater dilution to be a significant contributor to the in-situ decrease of nitrate and some other contaminants, a dilution factor approach should be provided. Such projections should be calculatable using simplified analytical techniques at a minimum, with a more detailed and robust approach being the use of a numerical model like the one developed by the USGS for South Hadley Fire District No. 2.

Additional Findings for Hydrogeology

We have no additional findings for hydrogeology under this review.

Transportation

Review Standards for Transportation

We reviewed the North Pole Estates Definitive Plan pursuant and limited to the following review standards for transportation:

- A. Ensure the submittal was prepared in accordance with accepted professional practices.
- B. Ensure the submittal appropriately assessed the adequacy of the existing and proposed roadways, the intersections of the existing and proposed roadways during and post construction—including, but not limited to, sight distances.
- C. Ensure the submittal utilized current accepted study techniques and data and is consistent with the Preliminary Plan Approval.

Findings by Review Standard

Weston and Sampson reviewed the Traffic Impact Study for the North Pole Estates Residential Development that was prepared by McMahon Associates dated October 2019 for Chicopee Concrete Service, Inc. The study was prepared for the full development of the site which included 67 single family residences; however, as part of the definitive site plan submission the applicant is only seeking approval for a nine-lot subdivision with two full access driveways onto Hadley Street (Route 47).

The comments below are based on the full buildout of the site as presented. Where required the comments related to only the nine-lot subdivision have been noted separately. Our review of the traffic study consisted of two parts. The first part determined if the traffic study was prepared in general compliance with both local and nationally accepted standards. The second part determined if there were any concerns with portions of the study that required additional clarification or information from the Applicant in order to determine the operational capacity and safety aspects of the proposed project.

In addition, at the request of the Town, our review looked at the potential construction impacts associated with the proposed construction and material removal operations as these would represent an increase in traffic at the existing gravel operation driveway over the current conditions.

Under part one our review, we determined that the traffic study was prepared utilizing Massachusetts Department of Transportation Traffic Impact Assessment Guidelines and nationally accepted standards and would be acceptable for further review.

Under part two our review determined that there were several areas where there were inconsistencies or missing information that the Applicant would need to provide for us to complete a thorough review of the traffic study to determine that the results presented are acceptable. Below is a summary of the relevant issues that need further consideration by the applicant.

1. Under the Existing Traffic Volumes section, the study indicates that the morning peak hour occurs between 8:00-9:00 a.m. based on the volumes at the intersection of Sullivan Lane and Hadley Street. Sullivan Lane is a dead-end roadway with minimal traffic entering and

exiting from the Sullivan Lane during this time period and consequently less traffic entering and exiting from Pearl Street. However, our review of the traffic volumes show that the peak hour at Pearl Street is between 7:30-8:30 a.m. and results in more side street traffic entering and exiting from Pearl Street, including a number of left-turns out which have a greater impact on the overall operations of the intersection. Therefore, we would request that the applicant revise the analysis to utilize the 7:30-8:30 a.m. peak hour for the analysis as it may result in greater operational constraints, especially under the future conditions when additional site-generated traffic is added to the No-Build condition.

2. Under the Crash Summary section, the study indicates that the data reviewed was based on MassDOT data which may not include all of the relevant local data. Please clarify if the Applicant's engineer discussed local crash data with the South Hadley Police Department to determine if there is any additional local data that should be reviewed along this corridor. If not, then we recommend that Applicant's engineer reach out to the South Hadley Police Department to obtain local data and compare it to the MassDOT data.

In addition, we would request that the crash data for the existing gravel operation driveway be reviewed since it is our understanding that it will be used during construction for material removal operations.

Lastly, the MassDOT crash rate worksheets are mentioned, but copies have not been provided as part of the study or appendix for review. Please provide copies of the crash rate worksheets for review.

3. Under the Site-Generated section there is an error in Table 2 whereby the Weekday PM Inbound traffic is shown as 44 trips instead of 43 trips as shown in the Appendix. This also results in an incorrect total amount of trips. We do not believe this error will result in a change in the overall operational results and is noted for reference should the Applicant's engineer be required to revise the study to address other issues noted in this review.
4. Under the Trip Distribution section, a large percentage of traffic was shown going to/from the site from the south on Hadley Street (Rte 47). The study indicates that this distribution was based on a review of the 2010 Census journey to work data. Since this data is almost 10 years old please clarify if any consideration was given to reviewing existing travel patterns along Hadley Street and adjusting the volumes to show more volume to/from the site from the north along Hadley Street as seen at the intersection of Hadley Street and Pearl Street.
5. The Traffic Operational Analysis section indicates that the capacity analysis was based on the 2010 Highway Capacity Manual (HCM), however the Appendix indicates that the study was based on the 6th Edition of the Highway Capacity Manual. Please clarify which version of the HCM was used to prepare the Synchro Analysis.

6. The Synchro Analysis provided in the Appendix utilizes the Peak Hour Factors (PHF) shown in the count data for the main line roadway, but a default PHF of 0.80 for the side streets under the existing conditions which does not correspond to the count data. Under the future conditions, the PHF from the count data was utilized for the main line roadway and a default PHF of 0.80 was utilized for the side streets which does not correspond to the count data. Please clarify why there is this inconsistency as MassDOT recommends using the approach PHF shown in the count data for the existing conditions and a 0.92 PHF for main line and a 0.88 PHF for side streets under the future conditions. Please explain why the values presented in the Synchro analysis were utilized.
7. Under the Sight Distance section, the Applicant's engineer failed to provide a review of the intersection sight distance at the proposed driveways as required in the MassDOT TIA guidelines. During our field review it was noted that numerous trees and grading along the roadway appear to restrict the available intersection sight distance. Therefore, we request that the Applicant's engineer provide sight line profiles for the two proposed driveways for review. In addition, the driveway to the proposed single-family residence on Lot 8 shall also be included in the sight distance analysis for this project as it is a new access point to Hadley Street.

For all driveway the intersection sight distances should include a proposed 2-foot-high snowbank along the edge of the paved shoulder to simulate winter conditions as required by the Planning Board as part of their April 29, 2019 Preliminary Plans approval.

8. In addition, we request that the Applicant's engineer provide a review of both the stopping sight distance and intersection sight distance for the existing gravel operation as it was noted that this driveway will be used for material removal operations. It is assumed that this results in an increased rate of truck traffic over what utilizes this driveway under the current conditions. The Applicant shall provide a description of the anticipated increase in truck traffic required for the material removal under this first phase for review

During our site review two vehicles were observed utilizing the existing gravel operation driveway, a triaxle dump truck making a right turn into the site and a tractor trailer dump truck making a right turn out of the site. Both of these vehicles crossed the centerline of the roadway to complete their turning maneuvers. This Therefore, we request that the Applicant's engineer provide a turning movement analysis at the existing driveway using tractor trailer dump trucks to determine if these maneuvers can be made safely from the driveway with no encroachment into the opposing travel lane.

Additional Comments

Overall the study appears to show that even with the requested changes and clarifications noted above, that the operations of the two proposed driveway intersections are acceptable and the operations of the existing roadway intersections are not anticipated to be adversely affected by

the proposed full build out of the 67 lot subdivision. Therefore, it can be concluded that the proposed nine lot subdivisions will not have a significant operational impact on area roadways and intersections.

However the Applicant still needs to provide additional information on intersection sight lines at the two proposed site driveways and both the stopping sight and intersection sight distances for the driveway to the proposed single family residence to ensure that the safety of the intersections can be maintained. Final approval of the traffic study will depend on satisfactory review of the additional information requested including the operations and safety of the existing gravel operation driveway.

Definitive Plan Review

Review Standards for the Definitive Plan

We reviewed the North Pole Estates Definitive Plan pursuant and limited to the following review standards for definitive plans:

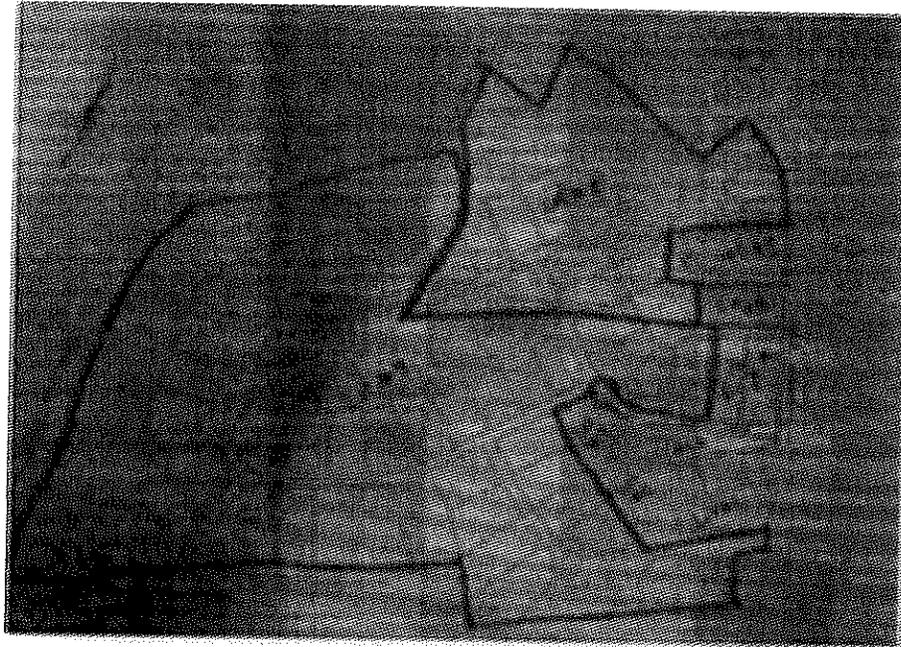
- A. Ensure the submittal was prepared in accordance with accepted professional practices.
- B. Ensure the submittal was prepared in accordance with the South Hadley Subdivision Regulations (Chapter 360 of the Town's Bylaws).
- C. Ensure the submittal conforms to the South Hadley Zoning Bylaw provisions applicable to the subject property.
- D. Ensure the submittal reflects conformity with the conditions attached to the Preliminary Plan Decision.

Review Findings for the Definitive Plan

We reviewed the applicants Definitive Plan submission and find that it to be prepared in conformance with the review requirements except as provided below:

1. Was the application prepared in accordance with the South Hadley Subdivision Regulations, i.e., Chapter 360 of the Town's Bylaws

Generally, we find that the Definitive Plans were prepared in accordance with Chapter 360 of the Town's Bylaws; however, we did find inconsistency between the layout dimensions of the Preliminary Plan and the Definitive Plan. The Definitive Plans depict lots 1 through 9, with lots 4 and 5 containing the bulk of the land that would eventually be the remainder of the proposed 67 lots. Many of the lot lines shown for initial lots 1-9 do not coincide with any lot lines for future phases. See the hand-drawn graphic below:



The applicant does not provide a comparison of the lot layout that was proposed for the approved preliminary plan and the lot layout that was proposed for the proposed definitive plan, but there appear to be discrepancies. The drawing above shows the approximate location of lots lines for lots 4, 5, 8 and 9. Those lines do not appear to coincide with future development lots as depicted. This calls into question the validity of lots 4, 5, 8 and 9 as they do not seem to coincide with lot lines for future development. To address this issue, we recommend that the Town request a phasing plan from the applicant that clarifies why lots 4, 5, 8 and 9 are being created as depicted. We anticipate that future phases will require either redrawing or amendment of the lot lines. This also raises a question related to the ultimate ownership of areas in lots 4 and 5 that are not part of the depicted full-build layout. We recommend that the Town ask for a clarification of this issue.

2. Conform to the South Hadley Zoning Bylaw provisions applicable to the subject property Agricultural Zoning Definition per Section 255-11.E *The purpose of this district is to promote*

agriculture, forestry, recreation, and land conservation, as well as compatible open space and rural uses, by siting development in a manner that preserves large contiguous tracts of open space and agricultural land. The preservation of scenic vistas of open land, forestland, the Mount Holyoke Range, the Mount Tom Range, and the Connecticut River in this district is a key aspect of maintaining South Hadley's desired scenic and rural identity.

In our opinion, the excavation of this site to match grade at the bottom of the extraction pit does not meet the definition of the purpose of the district. The proposed approach to grading does not promote agriculture, forestry, recreation, or land conservation. The proposed excavation appears to remove active agricultural fields, cut down a large forested area, and does not allow for recreation or land conservation. The project does not appear to site development in a manner that preserves large contiguous tracts of open space or agricultural land. We recommend that the Town ask for an evaluation of alternative approaches to grading that would better address the purpose of agricultural zoning at the project site.

3. Water Supply Protection District Section 255-35(1)(b) *Upon completion of earth removal operations, all altered areas shall be restored with topsoil and vegetative plantings.*

The applicant is quoted in the minutes of the November 18, 2019 meeting as saying "...replanting of individual lots would be up to the individual owners and street trees would be planted as required." At a minimum, we recommend that the current limits of the gravel operation be required to adhere to the topsoil and revegetation requirements of 255-35(1)(b). If part of the responsibility is passed from the applicant to future owners, we recommend that the Town reserve the option or review and approving proposed covenants to ensure they meet the Town's needs.

4. *Of particular interest regarding Outcome/Result #3 (i.e., in relation Section 255-35(1)(b)) above, the Town expects the Peer Reviewer to advise on the following questions:*

- a. *Whether the plans depict earth removal that is "incidental to and in connection with" development of site improvements necessary for the proposed North Pole Estates subdivision (per Section 255-84A(2) of the South Hadley Zoning Bylaw).*
- b. *Could changes in the proposed grade of the proposed street "Frosty Lane" as depicted in the Definitive Plan reasonably reduce the scope of the proposed Earth Removal while also conforming to the requirements for a roadway's maximum and minimum grades as specified in the South Hadley Subdivision Regulations?*
- c. *Does the proposed extent of earth removal appear to go beyond what is necessary to install the necessary proposed "site improvements for" North Pole Estates?*

In answer to item 4b above, we believe that there are alternatives to the proposed grade of "Frosty Lane" that could reduce the scope of the proposed earth removal. Maximum allowable

grades for Type A subdivision roads are 9 percent, and the proposed roadway is below this maximum in all locations.

We are unable to provide comment for Items 4a and 4c without additional information. These topics were discussed at our site visit with the applicant's engineer on February 24, 2020. It is our understanding that the applicant's intent in re-grading the site is to create a smooth transition from Hadley Street into the grades at or near the bottom of the current sand and gravel extraction pit. This approach will result in the export of a significant quantity of material. While we recognize that this is one way to create a gently sloping site, we recognize that there may be other methods of evening the grade including use a cut-and-fill approach with the material on the site or importing material to the site. An example of one such alternative could involve filling in a portion of the low-lying sand pit area to the west by utilizing material excavated for the construction of Frosty Lane and/or the grading of lots closest to Hadley Street. The feasibility of this or other alternate approaches may be contingent upon other design factors, but these have not been identified by the applicant. We find that the applicant's proposed approach may not comply with the spirit or requirements of the Town's Agricultural Zone, Section 255-11, which overlays the proposed project site. (See Definitive Plan Review Item 2, above.) We recommend that the Town require the applicant to provide an evaluation of the current design approach relative to other alternatives to help the town determine whether the current design approach strikes an acceptable balance between project feasibility and the interests of the Town's Agricultural Zone.

4. Reflect conformity with the conditions attached to the Preliminary Plan Decision

Below we provide a listing of preliminary plan conditions and our findings related to them.

- a. *Conformance to Regulations. The applicant shall conform to all applicable provisions of the Subdivision Regulations of the Town of South Hadley (including but not limited to, use of the Town's application form or an exact reproduction of said form), unless the Planning Board expressly waives any such provision as a condition of a Definitive Plan approval. The Planning Board, at this time, has not approved any waivers applicable to the Definitive Plan submittal.*

It is unclear why the site plan has changed from the Preliminary approval. We recommend that the Town ask the applicant for clarification on this issue.

- b. *Riverfront Delineation. The Riverfront Boundary is shown as "approximate." The applicant needs to have a formal delineation undertaken to ensure that no work is undertaken which would impact the Riverfront jurisdiction.*

The plans submitted dated January 20, 2020 show the riverfront boundary as "approximate." It appears no formal delineation was provided, and this condition was not satisfied. We recommend that the Town request clarification on the applicant's intent.

- c. *Limit on Grading. Limit grading of area in proximity to the Riverfront Boundary (as it is eventually delineated) and the other wetland areas to ensure that destabilization of trees and drainage*

systems don't have the long-term effect of damaging the Riverfront or wetland Resource areas.

The only areas shown on the grading and erosion and sediment control plans are in the area of the roadway. Proposed grading for the entire site should be shown to fully understand and evaluate how future phases of the subdivision will impact wetlands, groundwater, stormwater, and the river. We recommend that the Town request clarification on the applicant's intent.

- d. *Topography. The topography depicted on the Preliminary Plan appears to be generalized and interpolated. Due to the amount of grading anticipated, the topography must be verified.*

It is not clear whether this issue has been resolved. To our knowledge, the need for the extent of grading at the proposed project site has yet to be evaluated by the applicant. We recommend that the Town require a direct response to this concern prior to approval.

- e. *Groundwater Elevation. Verification of the "historical seasonal high groundwater" to ensure that the finished elevations will allow sufficient space for Stormwater detention, septic tanks, and building foundations not to be within 5 feet of the "seasonal high groundwater."*

Our findings and recommendations are provided under the hydrogeological review.

- f. *Traffic Analysis. Traffic analysis to include a determination of impact on the existing traffic patterns and flows on Hadley Street, Sullivan Lane, and Pearl Street. This analysis should include a sight distance analysis—particularly for peak periods and taking into consideration winter conditions.*

Our findings and recommendations are provided under the transportation review.

- g. *Construction Staging/Operation Planning. A plan for ensuring that construction equipment and operations do not adversely impact the groundwater supply. This should include an Operations & Maintenance Plan and Emergency Response Plan that establishes a specific location for maintenance of equipment and their storage when they are not in use on the site.*

The Definitive Subdivision Plan for North Pole Estates does appear to show construction staging or operations and, therefore, we are unable to review them for adequacy of groundwater protection. The applicant's Operation and Maintenance Plan makes reference to an "equipment location" but does not appear to indicate a proposed location or to provide for facilities such solid waste disposal and containment, hazardous materials storage, equipment refueling, or equipment washing. We recommend that the Town require the applicant address this item prior to approval.

- h. *Vegetative Maintenance. Mature trees can benefit the environment and homeowners in many ways. Accordingly, the developer should seek to minimize removal of trees from the site as one of the approaches to managing erosion. The phasing plan for the development needs to include a phasing plan for tree cutting to prevent destabilization of the extreme slopes*

throughout the entire site, and to prevent the proposed stormwater basins from being overwhelmed during the construction phase.

The applicant's materials do not appear to address phasing, vegetation maintenance, minimization of tree removal, or management of erosion on steep slopes. We recommend that the Town require the applicant address this item prior to approval.

- i. Revegetation Plan. The site has been subject to a significant amount of disturbance and the proposed Preliminary Plan suggests significant additional disturbance (such as removal of most of the sites' vegetation and top soil, excavation of most of the site, etc.) will be part of the development of this subdivision. The disturbance could result in long term degradation of the site including "steep" slopes which could render lots effectively unbuildable. Therefore, to ensure that the site remains stabilized, the applicant needs to provide a plan for restoration of the gravel pit, including grading, replacement of topsoil, and re-vegetation along with a time schedule for implementation. This timetable must provide that revegetation occurs as part of the process of constructing the infrastructure as well as post construction. Therefore, the applicant is to include with the Definitive Plan submittal, a plan including narrative description for the revegetation during both phases of the project: 1) interim phase which details restoration/landscaping during construction and 2) final phase, post construction. The post infrastructure construction phase must incorporate the street trees and other landscape planting required under the Subdivision Regulations.*

A timetable is submitted that indicates the task of "Landscape, Loam and Seed Affected Areas" will take 2 weeks. We did not find any further detail on how this condition will be met. We recommend that the Town request clarification on the applicant's intent.

- 9. Fill Material. Details on how any fill material will be verified that it is not contaminated.*

We did not find a discussion on how this condition will be met. We recommend that the Town request clarification on the applicant's intent.

- 10. Buyer Notification. The Water Supply Protection District has unique restrictions applicable to all property owners (particularly important for single-family homeowners) which do not apply to all properties in South Hadley. Adherence to these restrictions (such as on pesticides, fertilizers, application of materials to melt ice, etc.) is particularly important to protect the water quality in a Water Supply Resource Areas Zone II. Accordingly, the applicant is to provide details on how lot purchasers will be informed that they are in a Zone II area.*

We did not find any further detail on how this condition will be met. We recommend that the Town request clarification on the applicant's intent.

- 11. Hydrogeological Assessment Study. The purpose of the Water Supply Protection District is to promote the health, safety and welfare of the community by protecting and preserving the surface and groundwater resources of the Town and the region from any use of land or buildings which may reduce the quality and quantity of its water resources. As such,*

excavation of a substantial amount of material and construction of a substantial number of houses in the Zone II could have an adverse impact on the health and safety of the residents and impede the ability of the District to continue to supply public water. Therefore, a Hydrogeological Assessment Study demonstrating that the proposed development will not have an adverse impact on the District 2 Public Water Supply, health and safety is to be provided by the applicant.

Comments are provided under the hydrogeologic review section of this letter report.

- 12. Earth Removal Details. Details on the earth removal, particularly any proposed crushing operation to be carried out on site.*

We found a limited discussion of earth removal on page 21 of 30. None of the practices listed discuss proposed crushing on the site. We found no further detail on how this condition will be met. We recommend that the Town request clarification on the applicant's intent.

- 13. Pavement. The Planning Board is supportive of minimizing the extent of pavement to be provided in this subdivision. Further, South Hadley's Stormwater Management Bylaw and policies in the Master Plan encourage minimizing impervious surfaces and use of Low Impact Development approaches. Given the important significance of the Zone II of the Dry Brook Hill Water Supply, such approaches are more significant in this area and are encouraged to be incorporated into the Definitive Plan.*

Comments are provided under the stormwater review section of this letter report.

- 14. Prior Contamination. The site has been traveled over, for decades, by trucks and heavy equipment. It has been used at times as a shooting range. Accordingly, the Definitive Plan submittal needs to address how the applicant plans to test the site for the presence of contaminants and mitigate any such contaminants found to be on the site.*

Our review of the applicant materials provided found no testing the site for the presence of contaminants or how any such contaminates would be mitigated. The Operation and Maintenance plan identifies how potential site contamination related to construction would be addressed and does not discuss testing or mitigation of previous contamination. We did not find any further detail on how this condition will be met. We recommend that the Town request clarification on the applicant's intent.

- 15. Special Permitting for particular lots. As proposed, lots 13 through 28 are in proximity to either Buffer Zone or Riverfront which are significant environmental resources. The applicant is encouraged to avoid these areas to lessen the potential impact on these resource areas. If the Definitive Plan includes creation of these or other lots within the same or similar proximity to these areas, as stated in the Conservation Commission's letter, lots will require special permitting by the Conservation Commission due to the proposed lots proximity to either Buffer Zone or Riverfront Area:*

a. Proposed lots 19 thru 28 along the northern boundary of the site are within Buffer Zone and as such will require the filing of a Notice of Intent for any work on those lots.

b. A formal delineation of the Riverfront Resource Area will be required relative to proposed lots 13 thru 19 are proximal to an area notes on the plan as "200' Riverfront Area Approximate". Additional permitting through the Conservation Commission is likely to be required for the resulting lots.

c. The Conservation Commission plans to review each proposed lot as specific development plans are generated to consider the extent to which building activities are jurisdictional to the Commission based on bylaws in place at the time of development.

d. where a proposed lot includes a portion of a Resource Area, the applicant is encouraged to depict building footprints for each lot to indicate that there is reasonable area in which to locate residential buildings thereon without request either a variance from the Zoning Bylaw or a waiver from the Wetland Bylaw. Again, the applicant is encouraged to consult with the Conservation Commission regarding the Wetlands Bylaw prior to submittal of a Definitive Plan.

Definitive plans submitted do not identify any lot locations beyond initial lots 1-9. Because the Preliminary plan is considerably different than Definitive plans submitted, it is impossible to determine if any of the above information will be satisfied. We did not find any further detail on how this condition will be met. We recommend that the Town request clarification on the applicant's intent.

16. *Peer Review Anticipated.* Based on the plans submitted and the input provided to date, the applicant should anticipate that the Town will likely seek to have peer reviews conducted on at least the following aspects of the Definitive Plan: Riverfront Resource Area delineation; Stormwater Management Plan; Hydrogeologic Assessment Study; Operation, Management, and Emergency Response; and Traffic Impact.

We have no comments related to this condition.

17. *Waivers.* The only waivers requested in the Preliminary Plan submittal were regarding the scales for the Plan and Profiles. The Board has allowed the Preliminary Plans to be reviewed and conditionally approved using the scales shown on the plans as submitted. As such, the Planning Board has granted the waiver regarding the scales for the plans and profiles for the Preliminary Plan. HOWEVER, this waiver does NOT extend to the Definitive Plan. Therefore the Planning Board's conditional approval of the Preliminary Plan do not convey any waiver applicable to the Definitive Plan submittal.

We have conducted a review in accordance with our contract with the Town, which includes specific standards for review. Our review does not address waivers. We recommend that the Town confirm that no further review is required under this item.

18. *Peer Review.* The comments from the Peer Review Letter submitted by Berkshire Design dated April 29, 2019 are to be addressed and resolved in the Definitive Plan submittal.

a. Lots 9-18 do not appear accessible due to proposed steep grades.

Lot 9-18 on the Preliminary plan cannot be compared with those on the Definitive plan. Preliminary plans show the entire subdivision layout with topography and lot 9-18 have significant slope along the frontage of the lots. Definitive plan design elements of roadway design, roadway location, stormwater design, and subdivision layout only show the initial 9 lots proposed. Lot 9 on the Preliminary plan is in a different location than on the Definitive plan. The Definitive plan has no lots beyond #9 labeled. We recommend that the Town request clarification on the applicant's intent.

b. The proposed drainage easement "to be acquired" on the lots N/F Peter Edge is not labeled as to width and appears to be very narrow. The project cannot function as designed without the easement and the easement should be wide enough to install and maintain the storm drainage pipes.

The Preliminary plans cannot be compared with the Definitive plans to determine if this has been satisfied. Preliminary plans show an underdetermined width storm drain easement. Definitive plans submitted vary significantly in design and no direct comparison can be made. Definitive plans do not show a drainage easement in the area shown fronting on Hadley Street. We recommend that the Town request clarification on the applicant's intent.

c. The proposed project will require extensive clearing and excavation of over 50 feet in some areas. A phasing plan should be provided that assure adequate loam and plantings are provided to stabilize the site.

We did not find a detailed phasing plan that assures adequate loam and plantings would be provided to stabilize the site. We did not find any further detail on how this condition will be met. We recommend that the Town request clarification on the applicant's intent.

19. *Roadway Maintenance. The proposed roadway is to be maintained by the developer until such times as the roadway becomes a public road (this is not to be interrupted as committing the Town to ever accepting the roadway as a public road). This maintenance task includes, but is not limited to, maintaining the safe roadway surface, snow removal, etc. Maintaining access of a roadway free of snow and ice in a Zone II Water Supply Recharge Area requires special considerations. Accordingly, the Definitive Plan submittal needs to provide a plan for maintaining the proposed roadway consistent with DEP requirements, best practices given the environmental conditions, and Section 255-35E and Section 255-35F of the Zoning Bylaw with particular attention to 255-35E(8) regarding stockpiling of snow and 255-35F(2) regarding minimal use of sodium chloride for ice control.*

Page 13 of the Hydrogeological Assessment Study briefly discusses roadway the proposed roadways. We did not find any further detail on how this condition will be met. We recommend that the Town request clarification on the applicant's intent.

20. *Department Comments. Review of the Preliminary Plan by the Town Departments generated comments/reviews from the following departments:*

- a) *April 29, 2019 email from Mark Aiken, Fire District #2 – Water Superintendent*
- b) *April 29, 2019 Letter from the Conservation Commission*
- c) *April 24, 2019 email from Fire District #2 Fire Chief Scott Brady*
- d) *April 24, 2019 email from Police Chief Jennifer Gunderson*
- e) *April 18, 2019 Letter from the Fire District #2 – Board of Water Commissioners*
- f) *April 29, 2019 Letter from Berkshire Design transmitting their Peer Review*

Comments from most of the departments are of a nature that they should, to the extent possible, be addressed and resolved during the course of preparing the Definitive Plan prior to Planning Board action on any such Definitive Plan.

21. *Application Materials and Revisions Incorporated. All application materials (including subsequent revisions thereto) submitted to, and received by the Planning Board as part of the applicant's "Form B – Application for Approval of a Preliminary Plan" received by the Town Clerk on March 28, 2019 are hereby incorporated into and made part of this Decision. Furthermore, related materials are also hereby incorporated into and made part of this Decision. Said application and related materials specifically include, but are not limited to, the following...*

We have no comments related to this condition.

Additional Comments

59 of 131 indicates that 23 acres of "open space" will be provided along the Connecticut River. This area is not shown as open space on any of the plan sheets. Is this area the 200' riverbank setback? That area should not qualify as open space. Where is the 23 acres located?

61 of 131 indicates "landscaping will be consistent with that of other single-family homes." What does that mean? What "other" single-family homes?

Preliminary plans have basic details regarding entire site construction. They show approximate lot locations, the location of all proposed future roadways and proposed stormwater management for the entirety of the property. The Definitive plan submission is significantly different. No specific details are shown for the property and the initial lots 1-9 that are shown are not the same as the Preliminary plans. It is impossible to determine how the changes of Definitive plan lots 1-9 relate to future development plans as the design will have to change in order to accommodate the considerably different layout proposed.

A member of the public questioned how many trees would be removed at the November 18, 2019 minutes and the applicant states "...he would quantify the amount of proposed clearing." To our knowledge, this information has yet to be provided by the applicant.

Thank you for the opportunity to assist the Town of South Hadley with this review. If you should have questions related to this review, please contact me at 978-977-0110, ext. 7413 or by email at riordanj@wseinc.com.

EXHIBIT 5

The relevant sections of Chapter 255-7 of the South Hadley Zoning Bylaws:

§ 255-7 **Existing uses, buildings and structures; nonconforming uses.**

A. *Applicability. This bylaw or any amendments thereto shall not apply to the use of any structure or land lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication or notice of the public hearing on such bylaw required by MGL c. 40A, § 6, as amended, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent, except where alterations, reconstruction, extension or structural change to a single- or two-family residential structure does not increase the nonconforming nature of said structure.*

B. *Change, substantial extension or alterations.*

(1) *Preexisting nonconforming structures or uses may be changed, extended or altered only upon approval of a special permit for such purpose by the Planning Board acting as the special permit granting authority, provided that the Planning Board shall find that such change, extension or alteration will not be substantially more detrimental than the existing nonconforming use to the neighborhood in which it is located. This shall not apply to billboards, signs, and other advertising devices subject to the provisions of MGL c. 93, §§ 29 through 33, inclusive, and to MGL c. 93D.*

(2) *In any twelve-month period, a nonconforming use or structure may not be altered, except as ordered by the Building Commissioner to make it safe, to the extent that the cost of such alterations exceeds 50% of the assessed value of the use or structure at the time of the change.*

(3) *Waiver of special permit requirement. The Planning Board may waive the requirement for a special permit when the changes/alterations are minor (such as those of a cosmetic nature, those necessary for users'/occupants' safety, those necessary to make the facility handicapped accessible, or any changes/alterations of a similar nature) and do not increase the capacity or change the use of the facility. Persons desiring such a waiver must submit a written request to the Planning Board and detail the changes/alterations to be made. The Planning Board may act on the request at a regular posted meeting without holding a public hearing. In granting such a waiver, the Planning Board must determine that the proposed changes/alterations will not be more detrimental than the existing nonconforming use to the neighborhood in which it is located. Granting of a waiver pursuant to this section of the Zoning Bylaw requires an affirmative vote by no less than four of the Planning Board members.*

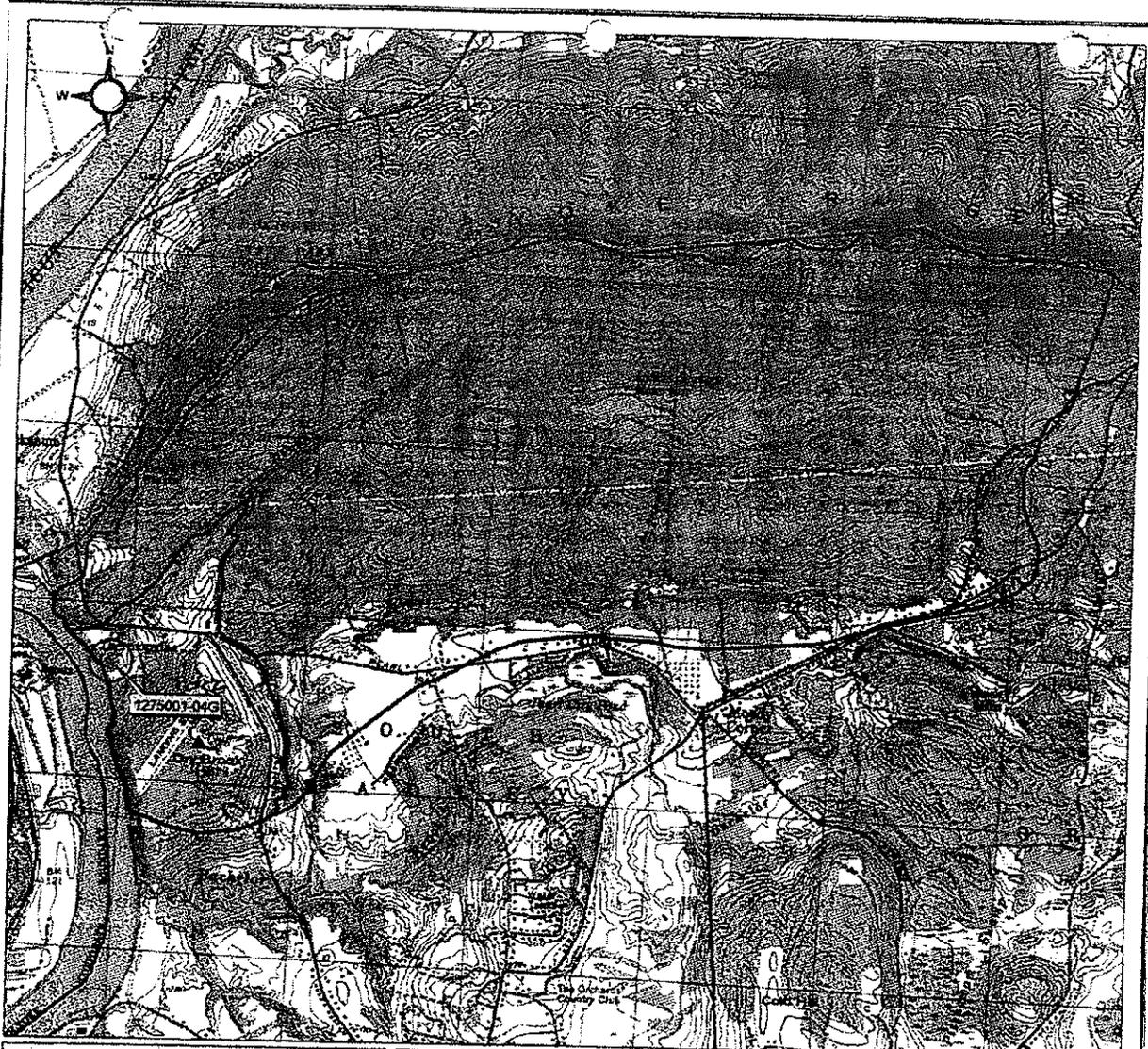
C. *Restoration. Any nonconforming use or structure in existence at the time of this bylaw or any amendment thereto may be reconstructed on the original foundation area if damaged or destroyed by fire or other accidental or natural cause; provided that not more than 50% of the use or structure, exclusive of foundations, has been so damaged or destroyed. Rebuilding or*

restoration, when permitted, shall be completed within 12 months after such catastrophe or disaster.

D. *Abandonment.* When a nonconforming use is discontinued, as evidenced by a lack of such use in a structure or vacancy, for a continuous period of 24 months, or by substitution of a more compatible use as provided in Subsection B above, such nonconforming use shall not thereafter be reestablished and all future uses shall be in conformity with the provisions of this bylaw.

E. *Exception to special permit requirement.* The requirement of Subsection B that preexisting nonconforming structures may be changed, extended or altered only upon approval of a special permit for such purpose by the Planning Board shall not apply where the proposed expansion/alteration of the structure will conform to the Zoning Bylaw dimensional requirements specified in § 255-21 of the Zoning Bylaw. This exception shall only apply to change, extension, or alteration of nonconforming structures and not nonconforming uses. Nothing in this section shall relieve the requirements for a special permit where a special permit is required under § 255-19 or Article VII or Article VIII of the Zoning Bylaw; neither shall anything in this section relieve the requirements for site plan review of any change, extension, or alteration where site plan review is required under § 255-19 or Article XII of the Zoning Bylaw.”

EXHIBIT 6



LEGEND

-  Zone I Boundary
-  Zone II Boundary
-  Zone III Boundary

-  Public Water Supply Wells
-  Potential Contamination Source:
Sand and Gravel Mining

2000 0 2000 Feet

Topographic Contour Interval = 3 Meters
Scale 1:25000

Municipality	South Hadley
PWS Identification #	1275001
Name of Water Supply	Dry Brook Well
Water Purveyor	South Hadley Fire District No. 2
Source Identification	1275001-04G / 056
Project Proponent	Massachusetts DEP
Title of Study / Purpose of Delineation:	SWAP Zone II
USGS Quadrangle Name	Mount Holyoke, Mass.
Consultant	None
Date of Study Submittal	July 2003
Latitude / Longitude of Source	42.28209 / 72.69933

Signatures:
Water Purveyor: *William Selbach* 10/7/03

Consultant:

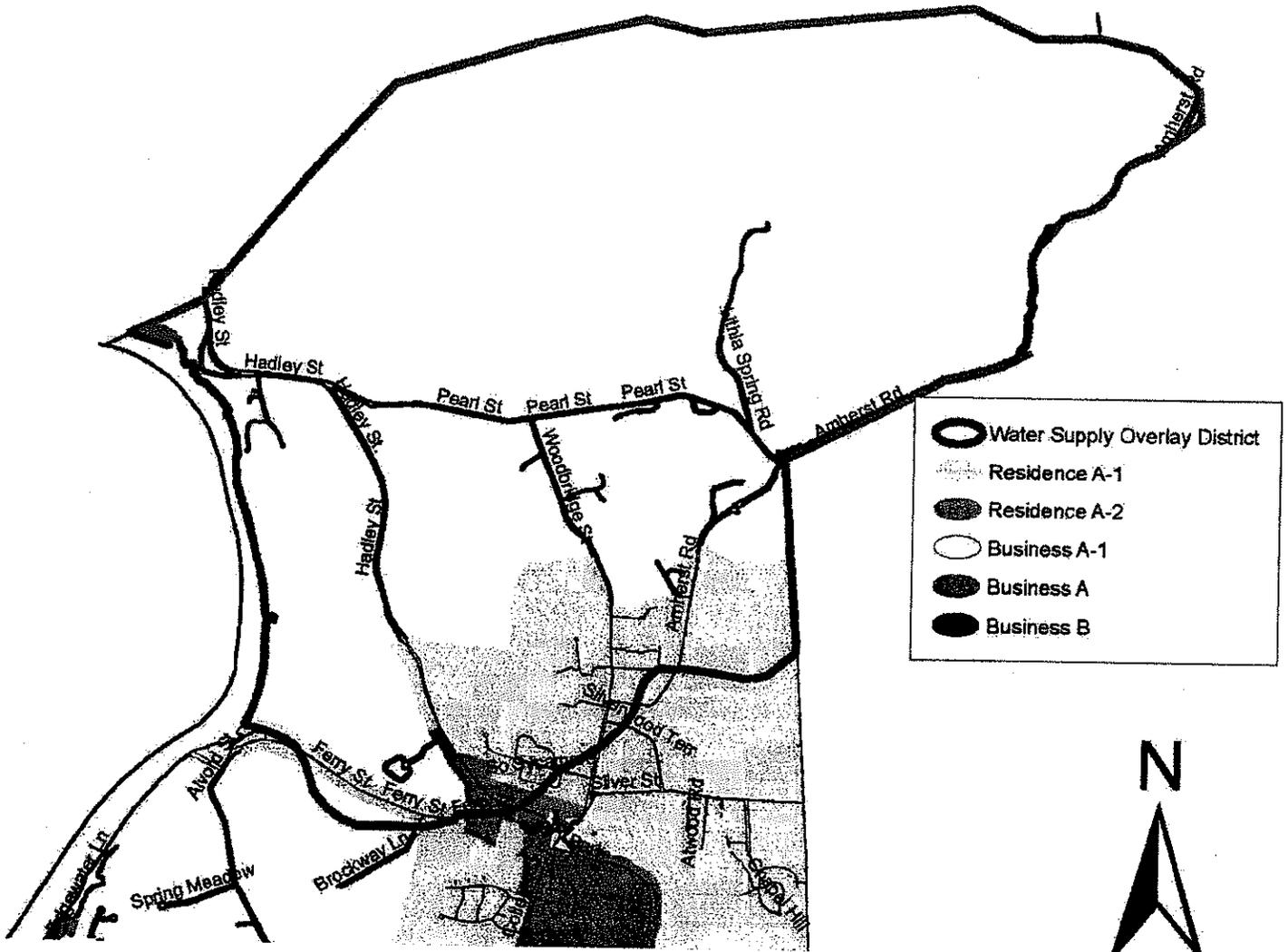
Project Proponent: *William Selbach* 10/7/03

Regional Water Supply Chief: *[Signature]* 10/28/03

ZONE I / ZONE II / ZONE III DELINEATION & POTENTIAL CONTAMINATION SOURCE LOCATION

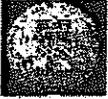
**SOUTH HADLEY FIRE DISTRICT NO. 2
DRY BROOK WELL, 1275001-04G
SOUTH HADLEY, MASSACHUSETTS**

App # 615



-  Water Supply Overlay District
-  Residence A-1
-  Residence A-2
-  Business A-1
-  Business A
-  Business B





Zones II and III and WSPD

South Hadley, MA

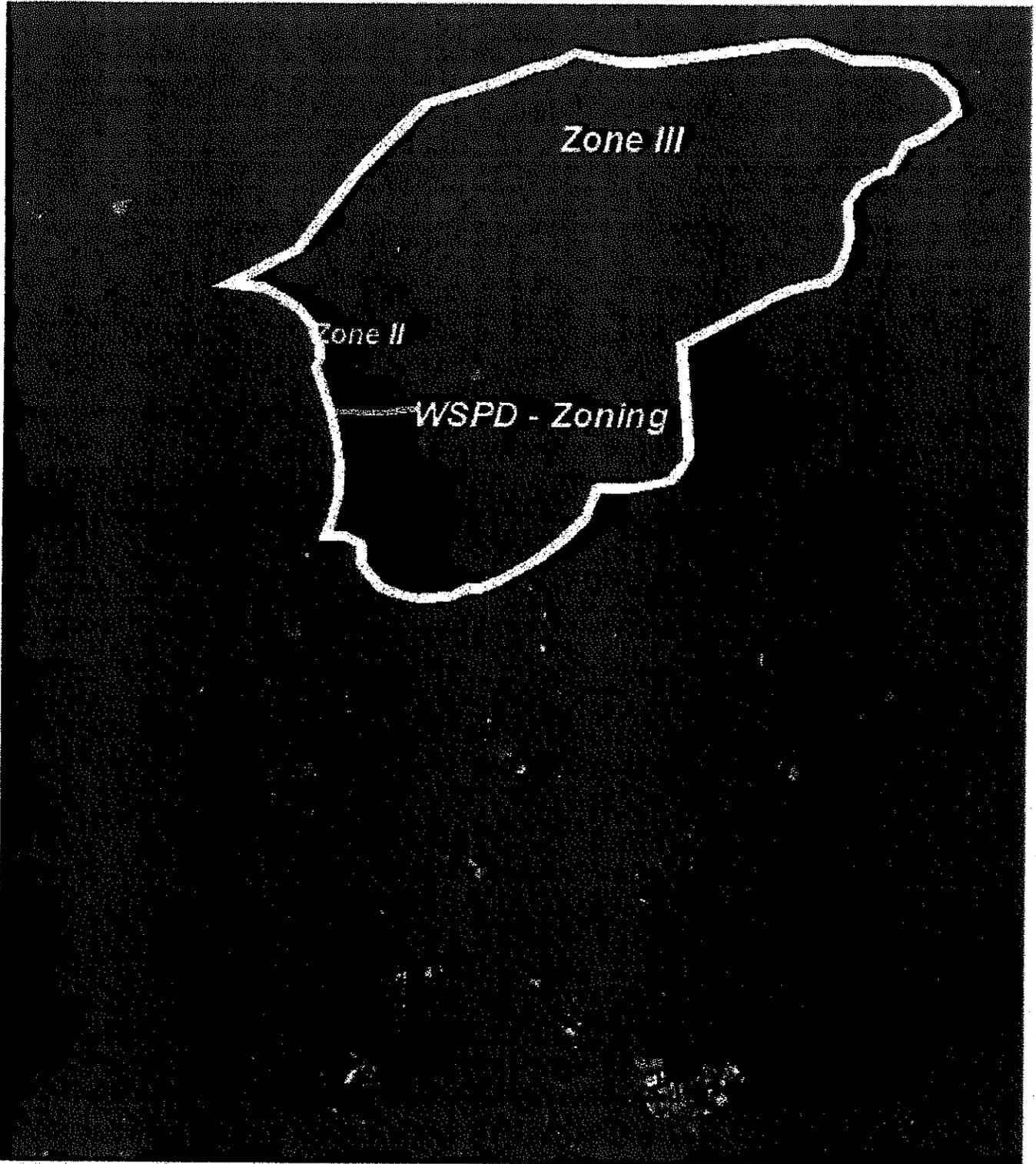
1 inch = 4000 Feet



March 7, 2019



www.cai-tech.com



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

EXHIBIT 7

2016 So Hadley Hazard Mitigation Plan Update- Summary

The key factors in flooding are the water capacity of water bodies and waterways, the regulation of waterways by flood control structures, and the preservation of flood storage areas and wetlands. As more land is developed, more flood storage is demanded of the town's water bodies and waterways.

The Town currently addresses this problem with a variety of mitigation tools and strategies. Flood related regulations and strategies are included in the Town's general bylaws, zoning by-law, and subdivision regulations. Infrastructure like dams and culverts are in place to manage the flow of water.

In the 2007 Hazard Mitigation Plan, flooding issues were mentioned at Route 47 at Bachelor Brook, Abby Street, Lathrop Street, Woodbridge Street, Newton Street and Silver Street. Each of these issues has been mitigated with a culvert replacement, pipe replacement or repair. "Issues remain on River Road, Pearl Street and **Sullivan Lane.**"

Open Space and Recreation Plan (Planning Document)

Inventories natural features and promotes natural resource preservation in the Town, including areas in the floodplain; such as wetlands aquifer recharge areas, farms and open space, rivers, streams and brooks.

Hazards: Floods Severe Thunderstorm Hurricanes Tornadoes Wildfire / Brushfire Earthquakes Dam Failure

Definitive Plan for Subdivision (Subdivision Regulations)

Requires a Definitive Plan for new subdivisions, including location of all wetlands, flood plains and proposed storm drainage

Hazards: Flooding

Development Impact Statement (Subdivision Regulations)

Requires a Development Impact Statement (DIS) detailing the impacts of the subdivision on surface water and subsurface conditions

Hazards: Flooding

Water Supply Protection District (Zoning bylaws)

Areas delineated as primary recharge areas for groundwater aquifers, and watershed areas for reservoirs are protected by strict use regulations. Provisions to control soil erosion.

Hazards: Flooding

Design Standards for Roads (Subdivision Regulations)

Standards include street grade regulations (4 to 9 percent maximum)

Hazards: Severe Snowstorms / Ice Storms

June 15, 2020 Public Hearing - North Pole Estates

South Hadley Planning Board will resume the public hearing on North Pole Estates on June 15, 2020 with the focus of that session being on the Applicant's Stormwater Management Plan and the Hydrogeological Assessment Report. Please use this form to sign up to speak and/or submit comments for the June 15, 2020 Public Hearing. (A session planned for June 22, 2020 will focus on the Applicant's Traffic Assessment Study and the Definitive Plan submittal.) Please note these hearings will be held virtually online.

Email address *

.....

Please note the Board's Virtual Hearing Guidelines/Protocols posted at:
<https://southhadley.org/DocumentCenter/View/6633/Guidelines-and-Protocols-for-Virtual-Hearings---2020-06-01> *

Check an acknowledgement that this was noted

Please State Your First and Last Name *

Nate Therien
.....

Please State Your Street Address including City/State *

25 Jewett Lane
.....

Do you wish to speak at the public hearing on June 15, 2020 *

Yes

No

You may also submit written comments. Do you wish to submit written comments at this time?

Yes

No

Please state any comments or questions you wish to submit at this time.

In assessing the adequacy of the catchment basin, why does the applicant rely on outdated TP-40 rainfall projections rather than more recent projections recommended by the Peer Reviewer?

Other comments or information that the Board should be aware of?

Option 1

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Google Forms

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Check an acknowledgement that this was noted

Please State Your First and Last Name *

NateTherien

Please State Your Street Address including City/State *

25 Jewett Lane

Do you wish to speak at the public hearing on June 15, 2020 *

Yes

No

You may also submit written comments. Do you wish to submit written comments at this time?

Yes

No

Please state any comments or questions you wish to submit at this time.

What are likely levels of ALL contaminants (including non nitrates like those mentioned by the Peer Reviewer and Professor Werner) in the cachement basin in each phase? And what is the rate of flow of contaminants from the basin into the aquifer?

Other comments or information that the Board should be aware of?

Option 1

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Please State Your First and Last Name *

Nate therien
.....

Please State Your Street Address including City/State *

25 Jewett Lane
.....

Do you wish to speak at the public hearing on June 15, 2020 *

Yes

No

You may also submit written comments. Do you wish to submit written comments at this time?

Yes

No

Please state any comments or questions you wish to submit at this time.

In later phases, will the catchment basin continue to be adequate, i

Despite potential increases in non-porous surfaces, which may create new vulnerabilities?

Other comments or information that the Board should be aware of?

Option 1

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Please State Your First and Last Name *

Nate Therien

.....

Please State Your Street Address including City/State *

25 Jewett Lane

.....

Do you wish to speak at the public hearing on June 15, 2020 *

Yes

No

You may also submit written comments. Do you wish to submit written comments at this time?

Yes

No

Please state any comments or questions you wish to submit at this time.

Will mining operations continue during the construction phase and beyond? When will they stop? How will these operations, compounding those of construction and/land use, affect the hydro geology of the site and the aquifer?

Other comments or information that the Board should be aware of?

Option 1

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Check an acknowledgement that this was noted

Please State Your First and Last Name *

Jacqueline Dupre

Please State Your Street Address including City/State *

118 Ferry Street

Do you wish to speak at the public hearing on June 15, 2020 *

Yes

No

You may also submit written comments. Do you wish to submit written comments at this time?

Yes

No

Please state any comments or questions you wish to submit at this time.

Deny this application.

Other comments or information that the Board should be aware of?

I see no reason to approve this application

Option 1

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Google Forms