

*Electronic Delivery*  
January 15, 2024

Sherborn Zoning Board of Appeals  
Sherborn Town Hall  
19 Washington Street  
Sherborn, MA 01770

**Re: Summary Comments on Farm Road Homes**  
Farm Road Homes Project  
55-65 Farm Road  
Sherborn, MA

Chair Novak and Board Members:

Thank you for your continued attention to the matters surrounding the proposed Farm Road Homes development submitted by Fenix Partners Farm Road, LLC (Fenix). This summary letter is intended to convey and confirm for the Zoning Board of Appeals (the Board) that essentially **none** of the concerns which have been raised during the last 6 months of deliberations at the various municipal public meetings, have been satisfactorily addressed by Fenix.

These concerns include, but are not limited to, the fact that Fenix does not have clear site control at the property based on the ambiguity of a restriction on the land to the benefit of the Town, and the fact that the Town has **not** formally waived their rights in this matter. We respectfully submit that the Board lacks the legal authority to adjudicate this matter, and is therefore legally incapable of acting in any favorable manner on this application. We feel that our position in these matters is not unfounded or arbitrary, and such covenants should be decided elsewhere, a position that has been offered in similar situations to those presently in front of your Board (refer to Attachment A - Tymann Letter to Southborough Zoning Board of Appeals dated November 27, 2023).

Another concern is – without any extension - the Board is being forced to make a decision that directly imperils our neighborhood's resources, and threatens our health and safety, **without obliging Fenix to submit a complete set of accurate and detailed plans for the development.** As of the date of this letter, and possibly to closing of your hearing to public comments, Fenix has not yet submitted final plans for the septic, for the stormwater, for the water supply well system, or their Nitrogen Loading Plan for the Town's consideration. We respectfully submit that the Board has any basis to act in any manner on this application given the absence of plans, specifications, and data that demonstrate our health and safety, and those of our neighbors, are being adequately protected from the unmitigated risk(s) this development poses.

Finally, if the Board identifies a clear path forward and elects to render some form of a favorable decision on Fenix's application, then we respectfully submit the Board is obliged to condition their approval to the fullest extent possible to protect the resources our neighborhood and the health of us and our neighbors.

In doing so, we recommend the following as potential conditions on any project decision favorable to Fenix:

- a> Proper adjudication of the property restriction issue, including the potential calling of a special Town meeting to vote on the Town's waiver of their rights to enforce the conservation restriction (if necessary);
- b> Compliance with nitrate and mounding standards which are protective of human health in this Nitrogen Sensitive Area – including the use of models to predict how on-site stormwater retention and discharge systems will affect groundwater flow, and Bedrock Fracture Flow Analyses to evaluate risks to the neighbor's groundwater supply wells;
- c> Compliance with nitrate and mounding standards which are protective of environmental resources and receptors such as the wetlands, Zone II, surface water, and riverfront areas - including a Nitrogen Loading Plan;
- d> Additional delineation and evaluation of the environmental resource areas that are subject to protection under the Wetlands Protection Act that may exist on the 65 Farm Road parcel itself, especially those areas that are subject to periodic flooding (please refer to recent submission demonstrating a 25% annual flooding probability based on last 20 years of site data – Attachment B);
- e> Establishment of a performance bond or other Financial Assurance Mechanism designed to provide assistance or recourse to those nearby owners whose private water supplies are directly jeopardized by the proposed development; and
- f> Potentially limiting the total number of dwellings or rooms within the proposed development to a reasonable amount that is commensurate with what the physical characteristics of the property will allow under Title V.

We are of the opinion that the reason Fenix has not provided a full and complete set of final development plans for review for this Farm Road Homes project is very simple – the engineering and scientific limitations of this particular property render it incapable of supporting thirty-two (32) dwelling units with more than 70 bedrooms in a manner that will comply with the relevant standards of care intended to be protective of human health and environmental receptors. **We believe that the principles of physics and chemistry simply do not appear to support the development of the Farm Road Homes project in the manner contemplated by Fenix.**

This project, as currently imagined and designed, is a far cry from a reasonable use of this land and does little, if anything, towards improving this Town's affordable housing stock while at the same time devastating the natural resources on which our neighborhood relies and endangering our health and safety, and that of our neighbors.

Thank you again for your continued attention in these matters, we continue to appreciate having an opportunity to voice our concerns and look forward to your deliberations on this project.

Most respectfully,

Brian D. Moore  
Mary O. Moore  
49 Farm Road  
Sherborn, MA 01770

**Attachment A**

**Tymann Letter to Southborough Zoning Board of Appeals  
November 27, 2023**

Benjamin B. Tymann  
Tel.: 617.933.9490  
btymann@tddlegal.com

November 27, 2023

**BY E-MAIL ([jay@mtclawyers.com](mailto:jay@mtclawyers.com))**

Southborough Zoning Board of Appeals  
Southborough Town House  
17 Common Street  
Southborough, MA 01772  
ATTN: Jason R. Talerman, Esq., Town Counsel

Re: Attorney Jason Panos Letter of November 15, 2023  
re: Effect of Agreement and Declaration of Restrictive Covenants

Dear Attorney Talerman:

“A restrictive covenant on land ... cannot be abrogated by any act by a zoning board.” *135 Wells Avenue, LLC v. Housing Appeals Committee*, 478 Mass. 346, 358 (2017). The Residences at Park Central LLC (the “Applicant”) sidesteps this crucial principle of Massachusetts law in its counsel’s lengthy letter of November 15, 2023. That letter also spends much time trying to distract from and obscure the basic tenets of the recorded Agreement and Declaration of Restrictive Covenants (“Restrictive Covenant,” a copy of which is attached hereto at ***Exhibit A***) that, in the express language of that instrument, “runs with the land” of the Applicant’s development locus (the “Project Site”<sup>1</sup>). Those facts, combined with the Supreme Judicial Court’s unambiguous holding in *135 Wells Avenue* that local zoning boards of appeals (“ZBAs”) are ***not*** empowered by Chapter 40B to nullify, amend, or disregard a restrictive covenant burdening the development locus, inexorably lead to the following conclusions directly relevant to the Southborough ZBA’s consideration of the Applicant’s current comprehensive permit proposal (the “Development Proposal”):

- (1) The Southborough ZBA cannot lawfully approve a development proposal that includes “any connection or access from the Project Site to, through or on Tara Road, Bantry Road, and Blackthorn Drive (except for emergency access from Blackthorn Drive ...).” Restrictive Covenant, Paragraph 5 (Limitation of Access). The Applicant’s Development Proposal seeks to use all three of these streets for access to the Project Site.

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<sup>1</sup> The “Project Site” is defined in the Restrictive Covenant as the entire 101-acre development locus purchased by the Applicant’s affiliate in 2013. Restrictive Covenant, at 1, para. 2. The Restrictive Covenant, at Table B, further defines the whole Project Site as the “Burdened Premises for Restrictive Covenants.”

- (2) The Southborough ZBA cannot lawfully approve a development proposal that has more than 158 units situated on the 17-acre tract of land on the Project Site formerly called the “Townhouse Component.” Restrictive Covenant, Paragraph 7(3). The Applicant’s Development Proposal seeks to build 200 units on this tract.
- (3) The Southborough ZBA cannot lawfully nullify other property rights in the Restrictive Covenant by approving a Development Proposal that depends on rescinding those property rights.

This office represents Mark and Heidi Boyden, Brian and Melissa Gray, Grant and Elizabeth Whitney, and David and Yvonne Wu, eight (8) abutters to the Project Site who are among the owners of the Restrictive Covenant’s defined “Benefitted Premises for Restrictive Covenants.” *See* Restrictive Covenant, Table A. My clients appreciate you forwarding the November 15 letter to me, as well as your and the ZBA’s invitation to respond to the letter (neither I nor the other abutters’ counsel, Daniel Hill, was copied on the letter). Our objective in this response letter is to succinctly state the fundamental factual and legal flaws in the Applicant’s position concerning the Restrictive Covenant.

## **I. Key Facts**

### **A. “Runs With the Land”**

My clients, other abutters, and the Applicant’s affiliated entities agreed to the Restrictive Covenant encumbering the Project Site in June 2015. These parties, by agreement, recorded the Restrictive Covenant in the Worcester Registry of Deeds at 54292, Page 9. Among the Restrictive Covenant’s terms are the following:

11. The covenants described above shall run with the land and the obligations imposed by the covenants shall be binding on Grantor’s successors in title and assigns and shall benefit the heirs, successors in title, administrators and executors of the Grantees.

12. The Grantor intends, declares and covenants on behalf of itself, and its successors and assigns that these covenants and the agreements, rights, and restrictions contained herein are not merely personal covenants of the Grantor, and shall inure to the benefit of the Grantees and their successors for the term of these covenants. The Grantor hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of these covenants to constitute restrictions and covenants running with the land shall be deemed satisfied in full ....

**B. Delineated Land Use Restrictions that Endure Irrespective of Applicant's "Abandonment of Project"**

The Restrictive Covenant singles out certain of its provisions as "Land Use Restrictions." *Id.*, ¶ 10. These Land Use Restrictions specially delineated in Paragraph 10 are Paragraphs 2(a), 2(b), 3(d)(i), 4, 5, and 7 of the Restrictive Covenant. Each of these specific restrictions were bargained for and then bestowed on the Benefitted Premises – "inur[ing] to the benefit of the Grantees and their successors," as Paragraph 12 excerpted above puts it – and each created a corresponding encumbrance on the Burdened Premises, the Project Site. The last two of the listed Land Use Restrictions, Paragraphs 5 and 7 (amplified further below), are particularly germane to the situation the Applicant's actions have brought us to today.

Paragraph 10 also states that the delineated Land Use Restrictions such as Paragraphs 5 and 7 are subject to termination only by the "termination provisions in Paragraph 8." Paragraph 8 is entitled "Abutters Covenants" and the termination provisions therein are triggered if certain Abutter Covenants are breached by an abutter-signatory. None of the abutter-signatories has breached the Restrictive Covenant, or is even accused of having done so. In short, Paragraph 8 and its termination rights are not applicable to this case. It is worth noting that the Restrictive Covenant excludes Paragraph 9, Abandonment of Project, as a basis for terminating the delineated Land Use Restrictions.<sup>2</sup>

**C. Germane Land Use Restrictions: Paragraphs 5 and 7**

The Restrictive Covenant's Paragraph 5, a specified "Land Use Restriction," states, in pertinent part:

5. Limitation of Access.

As a condition of the approval of the Use Variance and Comprehensive Permits by the Zoning Board of Appeals, Developer *agrees to prepare and record an appropriate restrictive covenant to run with the entirety of the land owned by [Applicant's affiliate] to prohibit any connection or access from the Project Site to, through or on Tara Road, Bantry Road, and Blackthorn Drive* (except for emergency access from Blackthorn Drive to the Project as shown on the Concept Plan).

(emphasis added). The Applicant's Development Proposal seeks to use all three of these streets for access to the Project Site.

The Restrictive Covenant's Paragraph 7, also specified as a "Land Use Restriction," states, in pertinent part:

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<sup>2</sup> The related question of whether the Applicant has breached the 2-year wait period under this same Paragraph 9 is among the issues that will be adjudicated in the Land Court. *See infra* at 4-5, subsection E.

## 7. Additional Conditions

...

3. The Apartment Component shall contain no more than 180 housing units and the Townhouse Component shall contain no more than 158 housing units together with any accessory buildings, facilities and utilities that are customarily incidental to such a residential development ....

The “Townhouse Component,” whose density was limited to 158 housing units, was situated on the same approximately 17-acre piece of land on which the Applicant now seeks to construct 200 housing units under the Development Proposal.

### **D. The Applicant Has Sued to Nullify the Restrictive Covenant but it Remains in Full Effect**

The Applicant and its affiliates have filed a lawsuit in the Massachusetts Land Court seeking to have the Restrictive Covenant they agreed to in 2015 nullified and/or ruled unenforceable. My clients are confident that the Applicant’s plea to the courts that it be allowed to renege on its obligations and have the Restrictive Covenant rescinded will fail. But even if the Applicant had a promising case, the Land Court has neither made a decision nor in any way altered the status quo of a Restrictive Covenant recorded and in full effect today. The Land Court is unlikely to issue a final ruling – win or lose from the Applicant’s perspective – *until 2025 at the soonest*.<sup>3</sup> The ZBA proceedings on this Chapter 40B application will almost certainly have been completed by then. The Restrictive Covenant will remain in place throughout these ZBA proceedings, and beyond, even in the unlikely event the Applicant ends up prevailing in whole or in part in the Land Court.

### **E. The Applicant Asks this ZBA to Step Into the Shoes of the Land Court and Resolve Open Questions in the Litigation**

In its counsel’s November 15 letter, the Applicant asks the ZBA to make several extraordinary findings, including that:

- “The Agreement [Restrictive Covenant] Does Not Apply to the Development” (p. 2);

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<sup>3</sup> The next Land Court status conference is not being held until December 20, 2023. Paper discovery is in its early stages. The Applicant and its co-plaintiffs filed the case in April 2023 and, per the Land Court’s “Average Track” Schedule, 31 months is the projected time from case filing to the beginning of the non-jury trial on the plaintiffs’ claims, including its attempt to nullify the Restrictive Covenant. If this case follows that average trajectory, it will not go to trial until October 2025. Three months after the trial, again per the Court’s Average Track, the parties will file post-trial briefs. The Land Court judge, normally months later, will then issue a written decision awarding judgment to the plaintiffs or to the defendants. The most likely year that we will see such a decision is 2026. The Restrictive Covenant is not going anywhere before then, if ever.

- “The Agreement is Unenforceable and Impossible to Perform” (p. 3);
- “The Development is Substantially Different from the 2015 Development” (p. 7); and
- “The [Worcester Superior] Court Ordered Annulment of the 2015 Development Makes the Agreement Moot and of No Force and Effect” (p. 9).

The Applicant seeks the ZBA’s deliberations and decisions on these questions even while acknowledging it has put these same questions before the Land Court in a contested proceeding that is a long way from being resolved. *See id.* at 10 (“the validity of the Agreement and the applicability to it in the context of the Application and the Development are the very bases of the litigation pursued by Park Central,” et. al, in Land Court). The ZBA should decline to the Applicant’s invitation to step into the shoes of the Land Court to resolve these legally-contested questions.

## **II. Key Law**

The Applicant is just as eager to sidestep the controlling law as it is the salient facts. The Applicant carries on about “site control,” but there is no site control question relevant to the present ZBA proceedings. The Applicant’s many citations to Housing Appeals Committee decisions regarding site control, and it being largely a matter for Chapter 40B subsidizing agencies, misses the point entirely. DHCD regulations make clear that the presence of a Project Eligibility Letter is conclusive evidence of site control at the ZBA hearing level. 760 CMR 56.04(6). This is a true statement of the law that is also irrelevant to the Applicant’s dilemma. The pertinent issue is not whether the Applicant has site control over the locus, it is that the locus is a “Burdened Premises for Restrictive Covenants” – covenants that are active, legally effective, and cannot be dislodged by either the Applicant or the ZBA. At least two of these enduring Land Use Restrictions running with the land preclude two pillars of the Development Proposal: 200 units and using Tara Road, Bantry Road, and Blackthorn Drive for access and egress.

The relevant law here, and it applies straightforwardly, is the Supreme Judicial Court’s *135 Wells Avenue* decision. In that case, the Chapter 40B developer controlled a 6-acre development parcel that was encumbered by a restrictive covenant benefitting the City of Newton that, for example, required a certain portion of the locus to remain open space. 478 Mass. at 347. The developer petitioned the Newton Board of Alderman to amend the restrictive covenant, and the board, serving as, effectively, the owner of these covenant rights, declined to do so. *Id.* The developer took the matter to court, arguing that an amendment to a restrictive covenant was the type of “permit or approval” that a zoning board of appeals could issue under the power of Chapter 40B or, put another way, the restriction was the type of local “requirement or regulation” a ZBA could waive or rescind under Chapter 40B. *Id.* at 348, 352-53.



The SJC, affirming the Land Court which reached the same conclusion, rejected the *135 Wells Avenue* developer's position, holding as follows:

- “A restrictive covenant on land ... cannot be abrogated by any act by a zoning board.” *Id.* at 358.
- “[Appellant] points to no authority, and we are aware of none, that would suggest a property right to be protected from certain conditions occurring on another’s land, such as building restrictions, is somehow less of a right than an easement to pass over a corner of another’s property en route to one’s own. To the contrary, we have concluded previously that both affirmative and negative easements are to be treated, equally, as easements.” *Id.* at 357, citing *Sylvania Elec. Prod. Inc. v. Newton*, 344 Mass. 428, 430 (1962) and *Patterson v. Paul*, 448 Mass. 658, 663 (2007).
- “[T]he authority to dispense with local requirements or regulations ... is necessary to ensure the completion of a G.L. c. 40B project. ***Nonetheless, that power clearly does not include the ability to alter real property rights, including restrictive covenants.***” *135 Wells Ave.*, 478 Mass. at 358 n.11 (emphasis added).

*See also Zoning Bd. of Appeals of Groton v. Hous. Appeals Comm.*, 451 Mass. 35, 40 (2008) (Supreme Judicial Court invalidating “[a]n order directing the conveyance of an easement” because such action “cannot logically or reasonably derive from, or be equated with, a local board’s power to grant ‘permits or approvals’” under Chapter 40B).

### **III. Conclusion**

My clients have not taken and do not take the position that these ZBA proceedings must cease. However, as demonstrated in this letter, the ZBA is without authority to lift the Restrictive Covenant that bars the Applicant from gaining approval for at least two central features of its Development Proposal.

We respectfully urge the ZBA to examine all aspects of the Development Proposal on its merits, including not just where project particulars run up against the Restrictive Covenant and its delineated Land Use Restrictions, but also with respect to all of the project’s adverse impacts such as traffic, drainage, and environmental concerns.

Southborough ZBA c/o Jason R. Talerman, Esq.

November 27, 2023

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Thank you for your consideration.

Very truly yours,

*Benjamin B. Tymann*

Benjamin B. Tymann

cc: Daniel C. Hill, Esq.  
Meghan E. Huggan, Esq.  
Jason A. Panos, Esq.

# EXHIBIT A



Anthony J. Vigliotti  
Register

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*A division of the Secretary of the Commonwealth*

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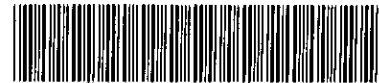
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TOWN: \_\_\_\_\_

*Southborough*

PROPERTY ADDRESS: \_\_\_\_\_

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**AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**Agreement and Declaration of Restrictive Covenants** entered this 1st day of June 2015, by and between Park Central, LLC a Massachusetts Limited Liability Company with an address of 259 Turnpike Road, Suite 100, Southborough, MA ("PCLLC"), Capital Group Properties, LLC a Delaware Limited Liability Company with an address of 259 Turnpike Road, Suite 100, Southborough, MA ("Developer"), and the individual abutters to the project described herein (the "Abutters") set forth on the Schedule of Abutters attached hereto as **Exhibit A** and by reference incorporated herein and made a part hereof, each individual identified therein who executes the Agreement being a party hereto.

**Now, Whereas,** PCLLC is the owner of those certain parcels of land located at the intersection of Turnpike Road (Route 9 West), I-495 and Park Central Drive which land is located in the Towns of Southborough and Westborough, Massachusetts and the deed for which is recorded at the Worcester South District Registry of Deeds in Book 51568, Page 81, and filed with Worcester South District Land Court as Document Number 104352 (Certificate of Title 17001) (the "Project Site"), which land is shown on a conceptual development plan entitled "Capital Group Properties Park Central Condominium Plan" dated April 8, 2015, a copy of which is attached hereto as **Exhibit B** and by reference is incorporated herein (the "Concept Plan"); and

**Whereas,** PCLLC has retained Developer for the purposes of designing, permitting, constructing and marketing a mixed use residential and commercial project (the "Park Central Project" or "Project")) on the Project Site consisting of up to 158 market rate townhouse condominiums to be situated on approximately 56 acres of the subject premises (the "Townhouse Component") and a 180 unit affordable rental apartment complex consisting of two five story buildings to be situated on approximately 9.03 acres of the subject premises (the "Apartment Component"), all as shown on the Concept Plan; and

**Whereas,** prior to the preparation of the Concept Plan, PCLLC and Developer were actively engaged in the process of permitting a similar residential and commercial project with different density, building locations, roadway layout and access which design was objectionable to the Abutters; and

M.R: VARIANCE, Doc # 107411, Book 54060, Page 303.

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**CATANZARO and ALLEN**  
Attorneys at Law  
160 Waverly Street  
Ashland, MA 01721

Park Central Drive, Southborough MA

**Whereas**, PCLLC and Developer acting through their common Principal, William Depietri, and the Abutters, acting through counsel and/or individual property owner representatives have discussed and reviewed the various uses that PCLLC could develop on the Project Site, and based on such discussions, negotiations and concessions made by the Developer and the Abutters have agreed, subject to the terms and conditions set forth in this Agreement, that the Park Central Project may be developed as substantially shown on the Concept Plan; and

**Whereas**, in order to proceed with the development and construction of the Park Central Project PCLLC and Developer will require certain municipal and/or state and/or federal permits, and approvals, including without limitation, a Use Variance from the Southborough Zoning Board of Appeals; a Comprehensive Permit from the Southborough Zoning Board of Appeals, an Order of Conditions from the Southborough Conservation Commission (or, a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection), Site Plan Approval from the Southborough Planning Board, and Earth Removal, Building and other permits from various boards, commissions, departments, and/or agencies, local, state and federal (collectively the "Necessary Permits"); and

**Whereas** PCLLC, Developer and the Abutters desire to formally settle any and all disputes and differences of opinion regarding all aspects of the future development of the Park Central Project so as to allow for PCLLC and Developer to proceed with the project without the objection of the Abutters throughout the permitting process.

**Now, therefore**, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Prior to or following the execution of this Agreement PCLLC and Developer shall file, amend and or reinstate such applications or petitions as are necessary and required to initiate or continue the process for obtaining the Necessary Permits for the Park Central Project as modified by the agreed-upon Concept Plan and the terms and conditions contained herein. The type, order, manner, substance and timing of such filings shall be in Developer's sole discretion except as provided herein. Developer will engage professional engineers to prepare a fully-engineered site plan in substantial conformity with the Concept Plan.

2. In connection with the Project, PCLLC and Developer agree to:

(a) engineer and design the Townhouse and Apartment Components of the Project so as to not exceed the residential density shown on the Concept Plan, meaning that the Townhouse Component shall not exceed 158 units and the Apartment Component shall not exceed 180 units; and

(b) reasonably, and to the extent allowed by site conditions (including those that are presently unknown), attempt to incorporate the roadway layout and building placement design as shown on the Concept Plan into the final engineered site plans. Deviations from the Concept Plan necessitated by site conditions or constraints or permitting requirements (other than

the terms and conditions of this Agreement) shall be within Developer's reasonable discretion and if implemented shall not constitute a breach of this Agreement; and

(c) provide a fully-executed copy of this Agreement to the Southborough Zoning Board of Appeals, Planning Board and Conservation Commission (at or before the time of application to such Board) and request that the terms and conditions set forth in this Agreement be reflected, as appropriate, in the permits and approvals to be issued by those Boards in connection with the Project; and

(d) provide a copy of engineered site plans to the Abutters prior to submission of those site plans to any Board or agency.

### 3. Temporary Grading Easements.

(a) Abutters Dante and Wendy DeMichaelis (15 Bantry Road), Brian and Melissa Gray (17 Tara Road), Mark and Heidi Boyden ( 11 Tara Road), Jude and Kiera Joujoute (9 Tara Road), David and Yvonne Wu, Trustees of the Wu Family Nominee Trust (7 Tara Road), each hereby agree to grant to PCLLC and Developer a 20' wide temporary grading easement on their respective properties along all common boundaries with the project site as shown on the Concept Plan. The Property Owners each further agree to execute in the presence of a notary and deliver to Developer, within ten (10) days of Developer's request, a formal recordable Grant of Easement, to be prepared by Developer if necessary as provided for herein. Said Grant of Easement shall not be immediately recorded but shall be held in escrow Angelo P. Catanzaro, Esq., Developer's Attorney, subject to the terms of this Agreement.

(b) Notwithstanding the foregoing Developer agrees that the ultimate use of the grading easement will be a "worse case" safeguard for Developer as Developer will attempt to eliminate any grading on the respective burdened properties wherever reasonably possible including the use of retaining walls of not more than three (3) feet in height if such walls will prevent or reduce the need for grading but still allow for the proposed density with appropriate side and/or rear yards for the abutting townhomes (minimum 20' level area between rear of townhouse units and bottom of retaining wall or bottom of slope, whichever applies). Where grading on an Abutter's property cannot be avoided by these measures ("Unavoidable"), the Developer may exercise the grading easement for the location where grading is Unavoidable. When the actual grading easements are identified on the final engineered plans, the Developer and Developer's Engineer shall meet with the Property Owners prior to the submission of the final plans to the Zoning Board of Appeals for post-permit review and approval. In the event of a dispute between an Abutter and the Developer over whether grading on an Abutter's property is Unavoidable as described above, the parties agree that such dispute shall be resolved by an independent civil engineer, which shall be Brad McKenzie, P.E..

(c) The term of the temporary grading easements shall be 12 months from the date that the Order of Conditions issued for the Project's roadway under the state Wetland Protection Act becomes final, all appeal periods having expired. A grading easement

shall only be recorded at the Registry of Deeds *if and a only if* (i) the grading is Unavoidable; and (ii) the recording of the easement is a requirement of PCLLC or Developer's construction financing, or (iii) an Abutter notifies Developer that their property is for sale or is being listed for sale, it being the agreement of the parties hereto that in the event of such a proposed sale the affected Abutter shall notify the Developer in writing of such proposed sale within five (5) days of the signing of a Purchase and Sale Agreement. In the event that a grading easement has been recorded as allowed for herein, but the Developer does not exercise the easement, or the 12-month period has expired, the Developer shall thereafter promptly execute and record a Termination of Easement in form and substance satisfactory to the affected Abutter.

(d) The Abutters' agreement to provide easements on their properties is subject to the following additional conditions:

(i) no buildings, driveways, or any related above-ground infrastructure (exclusive of landscaping and fencing) on the Project Site shall be located within forty (40) feet of any land owned by an Abutter; patios may be as close as 35' to property boundaries if constructed flush with the ground, as depicted on the Concept Plan;

(ii) grading and any related earth removal activity within the easement areas shall not adversely affect the Abutters' septic systems, leaching fields or cause the trapping or retention of surface water on abutting properties, including but not limited to earth removal that leaves a slope on the side of a leaching field that exceeds design standards and criteria to prevent break-out;

(iii) any graded areas on abutting properties shall, at abutters option, be re-vegetated with a combination of the following; 8' to 10' evergreen (white pine, green or blue spruce) trees, grass & fencing not to exceed 6' in height, provided that there shall not be a solid line of fencing along the entirety of any abutting property line. Re-planting areas shall be limited to the easement areas and up to 20' onto the Project Site, at the option of the abutting property owner;

(iv) For any Abutter with a farmer's wall (rock wall) presently existing on their property line or within an easement area, the Developer shall, at the option of the Abutter, after excavation is completed, rebuild the wall in its current location to the maximum extent feasible, or rebuild the wall at a different, feasible location on Abutter's property as determined by the Abutter;

(v) Upon the completion of all excavation within an easement area, the topography of the land within the easement area shall conform to the proposed grading elevations shown on the Concept Plan, provided however that excavation that results in final grading elevations that diverge horizontally by up to 6" in any direction, and/or that result in slope that is less steep than shown on the Concept Plan, shall be considered a *deminimis* change not requiring approval or consent from the respective Abutter.



(vi) Prior to any excavation within any easement area, the precise location of the septic system and leaching field serving the property that is subject to the easement shall be obtained either from the town Board of Health, if an as-built survey plan is available, or from a survey performed by a qualified professional company, such as Northboro Septic at the Developer's expense. Once the location of the septic system and leaching field is identified, Brad McKenzie, P.E. shall, on behalf of the property owner, evaluate, at the Developer's expense, whether the proposed excavation within the easement area will have any adverse effect on the septic system or leaching field, including but not limited to the threat of breakout from the sides of the leaching field as a result of excavation in proximity to the leaching field. Proposed excavation shall be deemed acceptable if, after excavation, the septic system would conform to the dimensional requirements and standards set forth in Section 15.255(2) of Title 5, as if the system were a "mounded system" under the regulation. If the proposed excavation is determined by McKenzie to have an adverse impact, then the Developer shall modify its excavation plans to avoid any such impacts. All expenses related to the foregoing shall be timely paid by the Developer.

(e) The Developer's exercise of the easement on the property identified as 17 Tara Road, in addition to the above general conditions, is subject to the following additional conditions:

(i) to minimize excavation in the easement area, the Developer shall construct a back-filled 36" to 48" retaining wall with a 36" fence installed on top adjacent to property line but on the Project Site side of the property line, all as depicted on the Concept Plan.

(ii) The Developer may relocate the existing shed located on the lot by the driveway if the shed obstructs any excavation occurring in the easement area. In such an event, the Developer shall move the shed to a reasonable location chosen by the owner, or, alternatively and at the Developers option, the Developer may convey land to the lot owner on which to place the shed, provided that the shed relocation is compliant with zoning regulations.

(f) The Developer's exercise of the easement on 15 Bantry Road, in addition to the above general conditions, is subject to the following additional conditions:

(i) The grade for the easement at 15 Bantry Road, in the area directly behind the existing home, will not be below 456' above sea level.

(ii) Upon the completion of all excavation within the easement area, the topography of the land within the easement area shall either be flat or mimic the existing topography (slight incline with varied elevation).

(iii) Excavation on 15 Bantry Road shall be limited to the area delineated as "limit of clearing" on the Concept Plan. The existing farmer's stone wall shall be re-

built by the Developer at its current location or on the property line, and consistent with its current condition and dimensions.

(iv) To minimize excavation in the easement area, the Developer shall construct a back-filled 36" to 48" retaining wall with a 36" fence installed on top, adjacent to property line but on the Project Site side of the property line, all as depicted on the Concept Plan.

#### 4. Landscape Screening

(a) The Developer shall install at Developer's sole cost and expense, sufficient natural landscaped vegetation to densely screen the Project from the Abutters' properties. The vegetated screen shall be installed on the Project Site within ten feet of its boundary with the five Abutters' properties, and shall run the entire length of said property boundary with the five Abutters. Such screening shall take into consideration that the screening is for townhouses (not multistory apartment buildings or industrial or commercial uses) and that the area between the Abutters' homes and the townhomes is, for the most part, partially wooded. When engineered plans are substantially (90% +/-) complete, the five Abutters shall meet with the project Landscape Architect to discuss the type and scope of landscape screening to be provided. The types and quantity of landscaping improvements to be installed shall be determined by mutual agreement between each Abutter and Developer for the portion of the Landscaping Zone that abuts their respective properties, but shall at a minimum include a row of 6' to 8'-tall evergreen trees (white pine, green & blue spruce) spaced no less than 15 feet apart, trunk to trunk, and may include other trees, shrubs, grass and/or wooden fencing up to six feet tall.

(b) The Developer shall at Developer's sole cost and expense, install appropriate and reasonable natural landscaped vegetation in the general location of the emergency access gate at the end of Blackthorn Drive, as well as along the Project driveway that runs east to west from the emergency access connection to the Apartment Complex, to screen the Apartment Component from view of the abutters with frontage on Blackthorn Drive. Specifically, the Developer shall install an equal mix of 6' – 8' blue spruce and white pines along and on both sides the roadway between the emergency access connection and the Apartment Component, spaced 30' apart, excepting only those sections of the roadway that are directly in front of a building that fronts on the roadway. Further, a row of 6' – 8' blue spruce shall be installed, 30' apart, along the side yard property boundary of 25 Blackthorn Drive (on the Project Site side of the property line), running 100 feet in a northerly direction from the edge of the emergency access driveway. Further, if some or all of the ten townhouse-style homes shown on the Concept Plan being located in the area between Blackthorn Drive and the Apartment Component are not permitted to be built by a municipal or state authority, the Developer shall install additional 6' to 8' blue spruce along both sides of the roadway where gaps were left to accommodate the townhouse units as provided above.

(c) The Developer shall inspect the landscaping improvement described above within 18 months of occupancy of the directly abutting town homes to augment the original designed landscaping in order to screen specific views of the new abutting town homes described in paragraph (a) above. Likewise, an inspection within 18 months of occupancy of the Apartment

Component shall be made to augment screening for the Apartment Component described in paragraph (b) above. Further, the Developer shall remove and replace any dead or diseased plantings and trees that have failed to thrive 18 months after installation, and thereafter every 18 months to ensure that screening will always be in place. Compliance with the terms and conditions pertaining to Landscape Screening as set forth herein above is a *Required Site Design Condition*.

5. Limitation of Access.

As a condition of the approval of the Use Variance and Comprehensive Permits by the Zoning Board of Appeals, Developer agrees to prepare and record an appropriate restrictive covenant to run with the entirety of the land owned by PCLLC to prohibit any connection or access from the Project Site to, through or on Tara Road, Bantry Road, and Blackthorn Drive (except for emergency access from Blackthorn Drive to the Project as shown on the Concept Plan). The emergency access connection shown on the Concept Plan at the end of Blackthorn Drive shall be restricted to emergency and public safety vehicles. Subject to approval by appropriate municipal authorities where required, Developer shall post two signs reading "DO NOT ENTER - EMERGENCY VEHICLES ONLY" one on either side of the emergency access gate at the intersection of the emergency access and Blackthorn Drive. Control over the operation of the emergency gate shall be afforded solely to the Developer's ownership entity and Management Company, and/or the police, the fire department, emergency vehicles and the gate repair company and not to plowing or other sub-contractors. The emergency access driveway shall be limited to access for maintenance (including plowing), emergency use and temporary use for the construction of the extension itself. The emergency access connection shall not be used for access to the Project Site for the construction and development of the Project. These restrictions shall be incorporated into and made a part of the Use Variance Decision and the Comprehensive Permit.

6. Connector Road.

The Abutters acknowledge that the design for the Project will likely include, in Developer's sole discretion, a site connector road to Flagg Road permitting turning in both directions and with permitted connection to the 9.03 Acre "Future Development Lot" as shown on the Concept Plan for low-impact non-industrial use or Industrial use. The Abutters agree with such proposed design and use of the connector road as provided for herein and shown on the Concept Plan. In the event that any permitting authority of the Commonwealth of Massachusetts requires an intersection design different than the design agreed to herein, Developer shall install the required design without objection from the Abutters.

7. Additional Conditions.

The Project shall conform to the following additional conditions:

1. Any centralized trash/recycling area(s) in the Project shall be set back a minimum of 200 feet from any lot having frontage on Bantry, Tara or Blackthorn Roads.

2. PCLLC shall execute and record a permanent conservation restriction encumbering the portion of the Project Site that is north of the Apartment Component as shown on the Concept Plan as the restricted parcel, subject to whatever utility easements the Developer and/or PCLLC desire to retain on said parcel. Said restriction shall permanently restrict any further development of said parcel of any kind, except for infrastructure accessory and incidental to the Project. Said parcel, subject to the restriction, at Developer's option, may be conveyed to the Southborough Open Land Foundation ("SOLF") or other entity designated by the Town or selected by the Developer, all for Developer's tax consideration.
3. The Apartment Component shall contain no more than 180 housing units and the Townhouse Component shall contain no more than 158 housing units together with any accessory buildings, facilities and utilities that are customarily incidental to such a residential development, including, without limiting the generality thereof, garages, outdoor parking, recreational facilities, trash/recycling center, clubhouse/marketing center, maintenance buildings, sewage treatment plant, above and below ground utilities of every type and kind, including, without limiting the generality of the foregoing, water, drainage, electricity, sewer, telephone, exterior lighting, and cable, and any and all appurtenances, facilities, pipes, conduits and structures of every type and kind related thereto and in connection therewith, and all other buildings, appurtenances, facilities and utilities of every type and kind that the Developer in its sole discretion deems necessary and desirable.

8. Abutters' Covenants.

In consideration of the foregoing as well as all previous project development changes and concessions that have been made by PCLLC and Developer in an attempt to address Abutters development concerns as raised in prior public and private meeting and communications, each of the individual Abutters specifically covenant and agree as follows:

a. That the signing and delivery of this Agreement constitutes a binding agreement by each Abutter to waive their respective right to publically oppose or privately communicate any opposition to any local or state official, to any and all applications or petitions filed by Developer for any and all Necessary Permits which applications and/or petitions are consistent with the terms of this Agreement; and

b. That the signing and delivery of this Agreement constitutes a binding agreement by each Abutter to authorize the Developer to report to any permit granting or approval issuing authority that each Abutter has no objection to the allowance of each Necessary Permit as conditioned herein; and

c. That the signing and delivery of this Agreement constitutes a binding agreement by each Abutter to waive any right of appeal to any court or other appellate body from the granting, conditional granting or denial of any Necessary Permit; and

d. That the signing and delivery of this Agreement constitutes a binding agreement by each Abutter not to solicit or encourage any other Southborough resident to publically oppose or privately communicate any opposition to any of Developer's applications or Petitions for Necessary Permits.

In the event of a breach of the Abutters' Obligation in this Section 8, PCLLC and/or Developer may restrain and enjoin the breaching Abutter from such further conduct including further prosecution of any such appeal, it being understood and agreed that (i) the PCLLC and Developer's damages from such actions may at that time be difficult to ascertain and may be irreparable, and (ii) the breaching Abutter waives any defense that the PCLLC and Developer cannot demonstrate damage and/or can be made whole by the awarding of damages. Notwithstanding the forgoing right to seek equitable relief, upon a breach of this Section by any Abutter, PCLLC and Developer may terminate this Agreement. If the Developer appeals a Comprehensive Permit for the 40B Development issued by the ZBA to the state Housing Appeals Committee pursuant to G.L. c. 40B, §§20-23, the Abutters may intervene as an interested party in such appeal (subject to its general covenants above not to object to the Project), and the Developer shall not seek any changes to the design of the Project that does not conform to the Concept Plan and this Agreement.

#### 9. Abandonment of Project.

In the event that, for any reason Developer determines not to construct the Townhouse Component or the Apartment Component of the Project, including Developer's decision to abandon the Project (either prior to or following approvals) and/or Developer's election not to prosecute or defend any appeal regarding any aspect of the Project, Developer and PCLLC may terminate this Agreement upon written notice to Abutters, provided that no termination shall be effective unless and until the Developer and PCLLC have relinquished all rights in all Necessary Permits that have issued for the Project (either Component) in a form satisfactory to Abutters' counsel, and withdrawn all pending applications for Necessary Permits for the Project. After terminating this Agreement pursuant to this Section 9, the Developer, PCLLC, and any party financially-related thereto shall not submit any application for any permit or approval from a local, state or federal governmental entity for the development of the Project Site in the same or substantially similar manner as set forth in the Concept Plan for a period of two years commencing on the date of the termination notice. If after terminating this Agreement under this Section the Developer, PCLLC, and any party financially-related thereto attempts to develop the Project in the same or substantially similar manner as shown on the Concept Plan, or otherwise breaches this Section 9, the Abutters may restrain and enjoin said party from such further conduct including further prosecution of any such permit applications, it being understood and agreed that (i) the Abutters' damages from such actions may at that time be difficult to ascertain and may be irreparable, and (ii) the breaching party waives any defense that the Abutters cannot demonstrate damage and/or can be made whole by the awarding of damages.

10. Land Use Restrictions.

This Agreement shall be recorded in the Worcester South District Registry of Deeds and upon recording the provisions of Paragraphs 2(a), 2(b), 3(d)(i), 4, 5, and 7, subject to the termination provisions contained in Paragraph 8, and subject to the enforcement provisions contained in this paragraph below, shall constitute land use restrictions encumbering the Project Site as set forth in Addendum I attached hereto. The parties agree to execute and deliver any document or amend any existing documents reasonably necessary to effectuate the provisions of this paragraph or required by the Land Court for registration purposes.

11. Notices.

Any notice, consent, demand or other communication to be delivered to a party under this Agreement (each, a "Notice") shall be in writing and may be delivered by hand delivery or by reputable overnight delivery service, addressed as follows:

If to any Abutter or Abutters:

Wendy DeMichaelis  
15 Bantry Road  
Southborough, MA 01772

with copy to:

Daniel C. Hill, Esq.  
HILL LAW  
43 Thorndike Street  
Cambridge, MA 02141  
Dhill@danhilllaw.com

If to PCLLC and Developer:

William A Depietri  
Capital Group Properties  
Suite 100  
259 Turnpike Road  
Southborough MA 01772  
wad@cgp LLC.net

with copy to:

Angelo P. Catanzaro, Esq.  
Catanzaro & Allen  
100 Waverly Street  
Ashland, Massachusetts 01721  
Email: apc@catallen.com

12. Mutual Release.

Excepting only any and all debts, demands, actions, causes of action, suits, agreements, promises, doings, omissions, variances, damages, payments, monetary obligations, executions

and liabilities and any and all other claims of every kind, nature and description whatsoever, both in law and equity which in any way may arise out of or on account of this Agreement or the breach thereof, PCLLC, the Developer and the undersigned Abutters individually and collectively hereby remise, release and forever discharge each other from any and all debts, demands, actions, causes of action, suits, agreements, promises, doings, omissions, variances, damages, payments, monetary obligations, executions and liabilities and any and all other claims of every kind, nature and description whatsoever, both in law and equity from the beginning of time to the date of this Agreement. This release shall not be construed to extend to any parties other than the signatories to this Agreement.

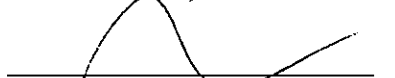
13. This Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the Commonwealth of Massachusetts, is to take effect as a sealed instrument, sets forth the entire contract between the parties, and may be canceled, modified or amended only by a written instrument executed by both Developer and Abutters. For purposes of construction, this Agreement shall not be deemed to have been drafted by any one party and any ambiguity in this Agreement shall not be construed against any one party.

14. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective directors, officers, representatives, stockholders, managers, members, heirs, executors, administrators, successors, parent company, and assigns.


15. This Agreement may be executed in counterparts, each of which will be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. A facsimile or electronic signature shall be as binding as an original signature.

Signed as a sealed instrument this 1st day of June, 2015.

**Park Central, LLC**

  
William A. DiPietri, Manager

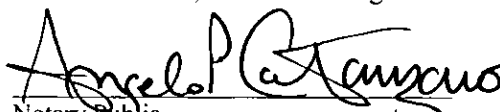
**Capital Group Properties, LLC**

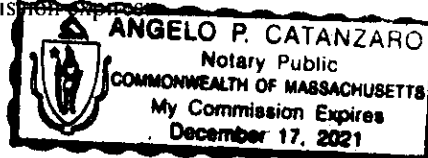
  
William A. DiPietri, Manager

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 10<sup>th</sup> day of June, 2015, before me, the undersigned notary public, personally appeared William A. DiPietri, as Manager of Park Central, LLC and as Manager of Capital Group Properties, LLC, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
Notary Public  
My commission expires



**Abutters**

Dante DeMichaelis Worcester, ss.  
 COMMONWEALTH OF MASSACHUSETTS  
 Dante DeMichaelis

On this 5<sup>th</sup> day of June, 2015, before me, the undersigned notary public, personally appeared Dante DeMichaelis, proved to me through satisfactory evidence of identification, which were MA DL, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Yuliya Juliana Hirnyk  
 Notary Public  
 My Commission Expires  
 November 1, 2016  
 Commonwealth of Massachusetts

Juliana Hirnyk  
 Notary Public  
 My commission expires: 11/1/16

Wendy DeMichaelis Worcester, ss.  
 COMMONWEALTH OF MASSACHUSETTS  
 Wendy DeMichaelis

On this 3<sup>rd</sup> day of June, 2015, before me, the undersigned notary public, personally appeared Wendy DeMichaelis, proved to me through satisfactory evidence of identification, which were MA License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.



MICHELLE A. JENKINS  
 Notary Public  
 Commonwealth of Massachusetts  
 My Commission Expires  
 April 29, 2016

Michelle Jenkins  
 Notary Public  
 My commission expires: April 29, 2016

David Wu  
 David Wu, Trustee of Wu Family  
 Nominee Trust

WORCESTER, ss.  
 COMMONWEALTH OF MASSACHUSETTS

On this 2<sup>nd</sup> day of June, 2015, before me, the undersigned notary public, personally appeared David Wu, Trustee of Wu Family Nominee Trust, proved to me through satisfactory evidence of identification, which were DRIVER'S LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



VANEETHA KANNAN  
 Notary Public  
 Commonwealth of Massachusetts  
 My Commission Expires Jan. 15, 2021

David Wu  
 Notary Public  
 My commission expires:

JAN 15, 2021



Yvonne Wu  
 Yvonne Wu, Trustee of Wu Family  
 Nominee Trust



VANEETHA KANNAN  
 Notary Public  
 Commonwealth of Massachusetts  
 My Commission Expires Jan. 15, 2021

COMMONWEALTH OF MASSACHUSETTS  
WORCESTER, ss.

On this 2nd day of June, 2015, before me, the undersigned notary public, personally appeared Yvonne Wu, Trustee of Wu Family Nominee Trust, proved to me through satisfactory evidence of identification, which were DRIVER'S LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

[Signature]  
 Notary Public

My commission expires: JAN 15, 2021

Mark Boyden

COMMONWEALTH OF MASSACHUSETTS  
 \_\_\_\_\_, ss.

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Mark Boyden, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
 Notary Public

My commission expires:

Heidi Boyden

COMMONWEALTH OF MASSACHUSETTS  
 \_\_\_\_\_, ss.

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Heidi Boyden, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
 Notary Public

My commission expires:

Yvonne Wu, Trustee of Wu Family  
Nominee Trust

## COMMONWEALTH OF MASSACHUSETTS

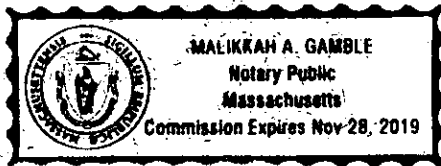
, ss.

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Yvonne Wu, Trustee of Wu Family Nominee Trust, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

*Mark Boyden*  
Mark Boyden



## COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 2 day of June, 2015, before me, the undersigned notary public, personally appeared Mark Boyden, proved to me through satisfactory evidence of identification, which were MA DRIVER'S LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

*Malikka A. Gamble*  
Notary Public

My commission expires: 11/28/2019

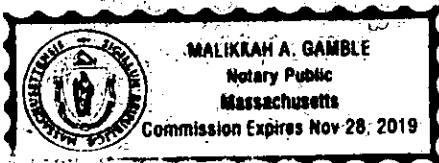
*Heidi Boyden*  
Heidi Boyden

## COMMONWEALTH OF MASSACHUSETTS

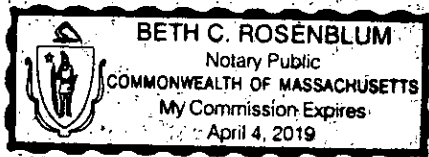
Worcester, ss.

On this 2 day of June, 2015, before me, the undersigned notary public, personally appeared Heidi Boyden, proved to me through satisfactory evidence of identification, which were MA DRIVER'S LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

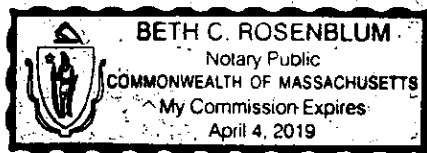
*Malikka A. Gamble*  
Notary Public

My commission expires: 11/28/2019

Brian W Gray  
 Brian Gray  
 AKA BRIAN W. GRAY



Melissa Gray  
 Melissa Gray



\_\_\_\_\_  
 Jude Joujoute

COMMONWEALTH OF MASSACHUSETTS  
WORCESTER, ss.

On this 2nd day of June, 2015, before me, the undersigned notary public, personally appeared Brian Gray, proved to me through satisfactory evidence of identification, which were MADRIDERS License to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Beth C. Rosenblum  
 Notary Public  
 My commission expires:

COMMONWEALTH OF MASSACHUSETTS  
WORCESTER, ss.

On this 2nd day of June, 2015, before me, the undersigned notary public, personally appeared Melissa Gray, proved to me through satisfactory evidence of identification, which were MADRIDERS License to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Beth C. Rosenblum  
 Notary Public  
 My commission expires:

COMMONWEALTH OF MASSACHUSETTS  
 \_\_\_\_\_, ss.

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Jude Joujoute, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
 Notary Public  
 My commission expires:

## COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

\_\_\_\_\_  
Brian Gray

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Brian Gray, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

## COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

\_\_\_\_\_  
Melissa Gray

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Melissa Gray, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

## COMMONWEALTH OF MASSACHUSETTS

Worcester County, ss.\_\_\_\_\_  
Jude Joujoute

On this 2nd day of June, 2015, before me, the undersigned notary public, personally appeared Jude Joujoute, proved to me through satisfactory evidence of identification, which were Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

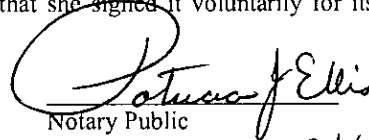
\_\_\_\_\_  
Notary PublicMy commission expires: October 21, 2016

  
 Kiera Joujoute

## COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 2nd day of June, 2015, before me, the undersigned notary public, personally appeared Kiera Joujoute, proved to me through satisfactory evidence of identification, which were Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

  
 Notary Public

My commission expires: October 21, 2016

## COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

\_\_\_\_\_  
 Grant H. Whitney

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Grant H. Whitney, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
 Notary Public

My commission expires:

## COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

\_\_\_\_\_  
 Elizabeth R. Whitney

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Elizabeth R. Whitney, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
 Notary Public

My commission expires:

## LIST OF EXHIBITS:

Addendum I – Restrictive Covenants

- A. Schedule of Abutters
- B. Conceptual Plan

## COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

Kiera Joujoute

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Kiera Joujoute, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

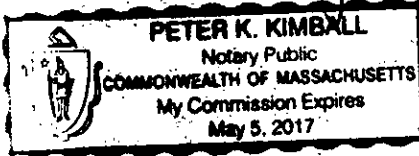
My commission expires:

*Grant H. Whitney*  
Grant H. Whitney

## COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this 9th day of June, 2015, before me, the undersigned notary public, personally appeared Grant H. Whitney, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary PublicMy commission expires: May 5, 2017

## COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

Elizabeth R. Whitney

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Elizabeth R. Whitney, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

## LIST OF EXHIBITS:

## Addendum I – Restrictive Covenants

- A. Schedule of Abutters
- B. Concept Plan

## COMMONWEALTH OF MASSACHUSETTS

, ss.

Kiera Joujoute

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Kiera Joujoute, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

## COMMONWEALTH OF MASSACHUSETTS

, ss.

Grant H. Whitney

On this \_\_\_\_\_ day of June, 2015, before me, the undersigned notary public, personally appeared Grant H. Whitney, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

## COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

Elizabeth R. Whitney

On this 9 day of June, 2015, before me, the undersigned notary public, personally appeared Elizabeth R. Whitney, proved to me through satisfactory evidence of identification, which were MA Drivers License to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

**LAURA LOUBIER**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires June 4, 2021



## LIST OF EXHIBITS:

Addendum I – Restrictive Covenants

- A. Schedule of Abutters
- B. Concept Plan

## ADDENDUM I RESTRICTIVE COVENANTS

[Defined terms used herein shall have the same meaning as set forth in the immediately preceding Agreement and Declaration of Restrictive Covenants.]

For One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the aforementioned PCLLC and Developer and its successors and assigns ("Grantor"), owner of the land contained in the Project Site, which land is described in deeds recorded in the Worcester South District Registry of Deeds in Book 51568, Page 81, and filed with Worcester South District Land Court as Document Number 104352 (Certificate of Title 17001) (the "Burdened Premises"),

Grants to the Abutters who are signatories to the immediately preceding Agreement and Declaration of Restrictive Covenants and who are the fee simple owners of certain parcels of land with frontage on Bantry Road and Tara Road ("Benefitted Premises"), said Abutters being identified in Exhibit A hereto, and their successors and assigns, and as appurtenant to the Benefitted Premises the covenants set forth below:

1. Any centralized trash/recycling area(s) in the Project shall be set back a minimum of 200 feet from any lot having frontage on Bantry, Tara or Blackthorn Roads.
2. PCLLC shall execute and record a permanent conservation restriction encumbering the portion of the Project Site that is north of the Apartment Component as shown on the Concept Plan as the restricted parcel, subject to whatever utility easements the Developer and/or PCLLC desire to retain on said parcel. Said restriction shall permanently restrict any further development of said parcel of any kind, except for infrastructure accessory and incidental to the Project.

Said parcel, subject to the restriction, at Developer's option, may be conveyed to the Southborough Open Land Foundation ("SOLF") or other entity designated by the Town or selected by the Developer, all for Developer's tax consideration.

3. The Apartment Component shall contain no more than 180 housing units and the Townhouse Component shall contain no more than 158 housing units together with any accessory buildings, facilities and utilities that are customarily incidental to such a residential development, including, without limiting the generality thereof, garages, outdoor parking, recreational facilities, trash/recycling center, clubhouse/marketing center, maintenance buildings, sewage treatment plant, above and below ground utilities of every type and kind, including, without limiting the generality of the foregoing, water, drainage, electricity, sewer, telephone, exterior lighting, and cable, and any and all appurtenances, facilities, pipes,



conduits and structures of every type and kind related thereto and in connection therewith, and all other buildings, appurtenances, facilities and utilities of every type and kind that the Grantor in its sole discretion deems necessary and desirable.

4. The final engineered site plans for the Project shall reflect the design of the Project as shown on the Concept Plan attached as Exhibit B to the greatest extent practical and feasible, recognizing that existing, natural site conditions may render precise conformity impractical or impossible, provided however that no portion of the Apartment Component shall be located east of the where the primary access road (which runs north/south) is shown on the Concept Plan, or further north by more than 25 feet from where it is shown on the Concept Plan.
5. No buildings, driveways, or any related above-ground infrastructure (exclusive of landscaping and fencing) on the Project Site shall be located within forty (40) feet of any land owned by an Abutter; patios may be as close as 35' to property boundaries if constructed flush with the ground, as depicted on the Concept Plan.
6. The emergency access connection shown on the Concept Plan at the end of Blackthorn Drive shall be restricted to emergency and public safety vehicles. Subject to approval by appropriate municipal authorities where required, Developer shall post two signs reading "DO NOT ENTER - EMERGENCY VEHICLES ONLY" one on either side of the emergency access gate at the intersection of the emergency access and Blackthorn Drive. Control over the operation of the emergency gate shall be afforded solely to the Grantor's ownership entity and Management Company, and /or the police, the fire department, emergency vehicles and the gate repair company and not to plowing or other sub-contractors. The emergency access driveway shall be limited to access for maintenance (including plowing), emergency use and temporary use for the construction of the extension itself.
7. The Grantor shall remove and replace and dead or diseased plantings and trees that were installed pursuant to Section 4 of this Agreement on a regular basis, but at least as frequent as every 18 months, to ensure that the screening contemplated by Section 4 does not deteriorate.

8. The term of these covenants shall be ninety-nine (99) years from the date of execution of this Agreement, subject to extensions pursuant to G.L. c. 184, §27 for successive 20-year periods if extensions are properly filed with the Registry of Deeds by any Grantee. A majority of the Grantees may release the owner of the Burdened Premises from any obligation under these covenants at any time, provided that each parcel of land that constitutes the Benefitted Premises shall be entitled to one vote regardless of any future division or subdivision of the ownership of the parcels that comprise the Benefitted Premises.

9. All references to Grantor and the Grantees made herein shall include their respective heirs and successors.

10. If any term or provision of these covenants is held to be invalid or unenforceable, the remainder of these covenants shall not be affected thereby and each other term and provision of these covenants shall be valid and enforceable to the fullest extent permitted by law.

11. The covenants described above shall run with the land and the obligations imposed by the covenants shall be binding on Grantor's successors in title and assigns and shall benefit the heirs, successors in title, administrators and executors of the Grantees.

12. The Grantor intends, declares and covenants on behalf of itself, and its successors and assigns that these covenants and the agreements, rights, and restrictions contained herein are not merely personal covenants of the Grantor, and shall inure to the benefit of the Grantees and their successors for the term of these covenants. The Grantor hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of these covenants to constitute restrictions and covenants running with the land shall be deemed satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full. The Grantor hereby agrees that the covenants confer an "actual and substantial benefit" to the owners of the Benefitted Premises and will constitute such an actual and substantial benefit at the time of any enforcement of the covenants by the Grantees.

**TABLE A –BENEFITTED PREMISES FOR RESTRICTIVE COVENANTS**

<b>Property Address</b>	<b>Description</b>	<b>Current Record Owner</b>
15 Bantry Road, Southborough, MA	Lot 132 on Land Court Plan 2891-U, Certificate No. 15208	Dante P. DeMichaelis and Wendy Y. DeMichaelis
17 Tara Road, Southborough, MA	Lots 139 and 140 on Land Court Plan 2891-Z, - Y Certificate No. 16972	Brian W. Gray and Melissa K. Gray
11 Tara Road, Southborough, MA	Lot 122 on Land Court Plan 2891-Q, Certificate No. 16540	Mark Boyden and Heidi Boyden
9 Tara Road, Southborough, MA	Lot 121 on Land Court Plan 2891-Q, Certificate No. 16980	Jude Joujoute and Kiera Joujoute
7 Tara Road, Southborough, MA	Lot 120 on Land Court Plan 2891-Q, Certificate No. 14091	David K. Wu and Yvonne Y. Wu, Trustee of Wu Family Nominee Trust
23 Blackthorn Drive, Southborough, MA	Lot 126 on Land Court Plan 2891-T, Certificate No. 14590.	Grant H. Whitney and Elizabeth R. Whitney

**TABLE B –BURDENED PREMISES FOR RESTRICTIVE COVENANTS**

Park Central, LLC its successors and assigns for the premises shown as 9.71 acre Future Development Lot, 56.75 acre 158 Unit Condominium parcel; 9.03 acre 180 Unit 40B Rental Project parcel and 21.0 acre conservation restricted parcel, being the same premises conveyed to Park Central, LLC by deed recorded in the Worcester District Registry of Deeds in Book 51568 Page 81.

**EXHIBIT A – Schedule of Abutters**

<b>Address</b>	<b>Assessor's Reference</b>	<b>Current Owner</b>
15 Bantry Road	277/33/59	DeMichaelis
17 Tara Road	277/33/60	Gray
11 Tara Road	277/33/43D	Boyden
9 Tara Road	277/33/43C	Joujoute
7 Tara Road	277/33/43B	Wu Family Nominee Trust

**EXHIBIT B – Concept Plan**



# Capital Group Properties

Park Central - Full Site  
Park Central, Southborough, MA

No.	Revision/Issue	Date

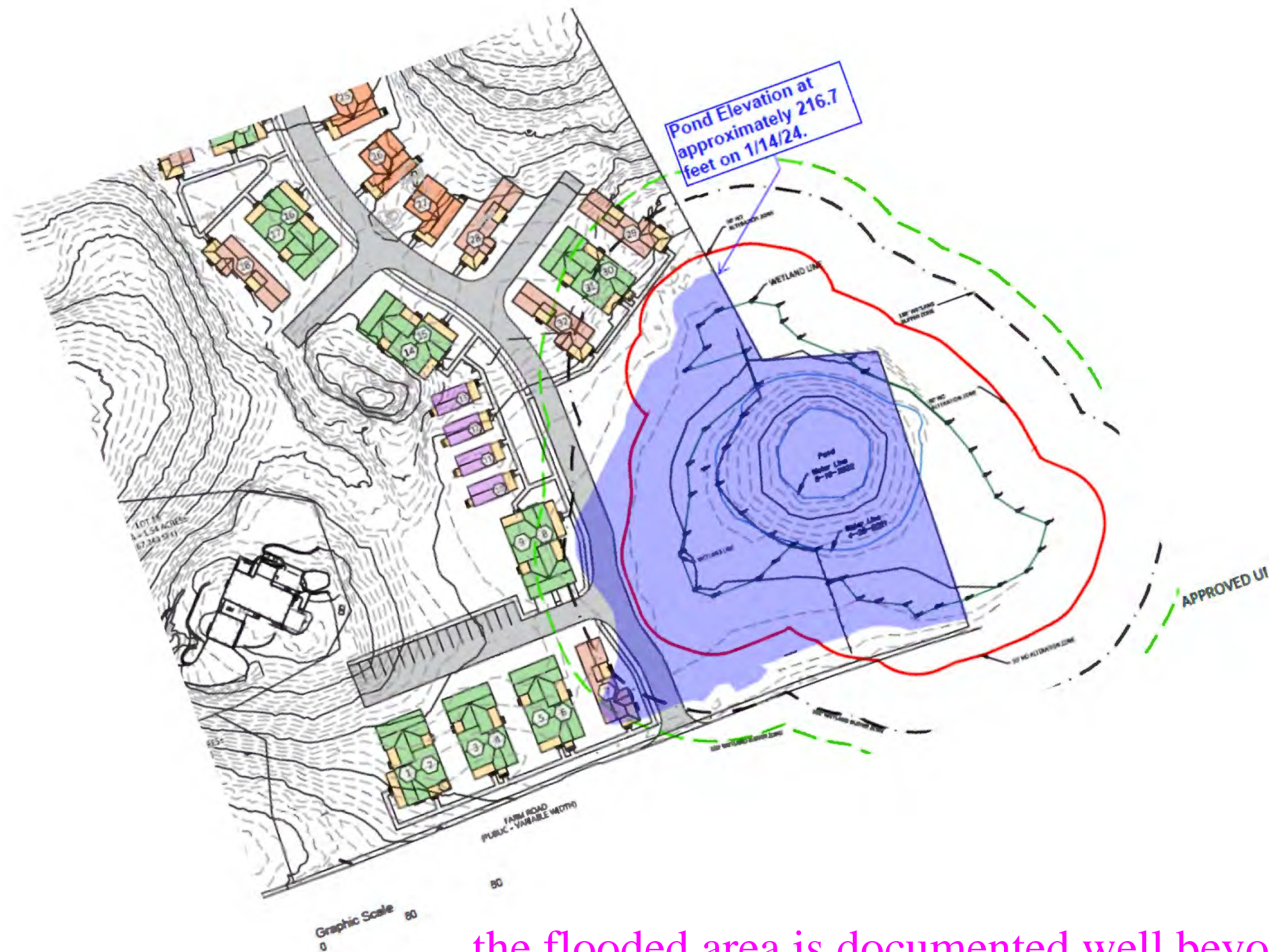
Capital Group Properties  
239 Turnpike Road, Suite 100  
Southborough, MA 01772

Project	
Drawn	April 8, 2015
Scale	1"=200'

**Attachment B**

**Updated Flooding Documentation  
as of January 2024**

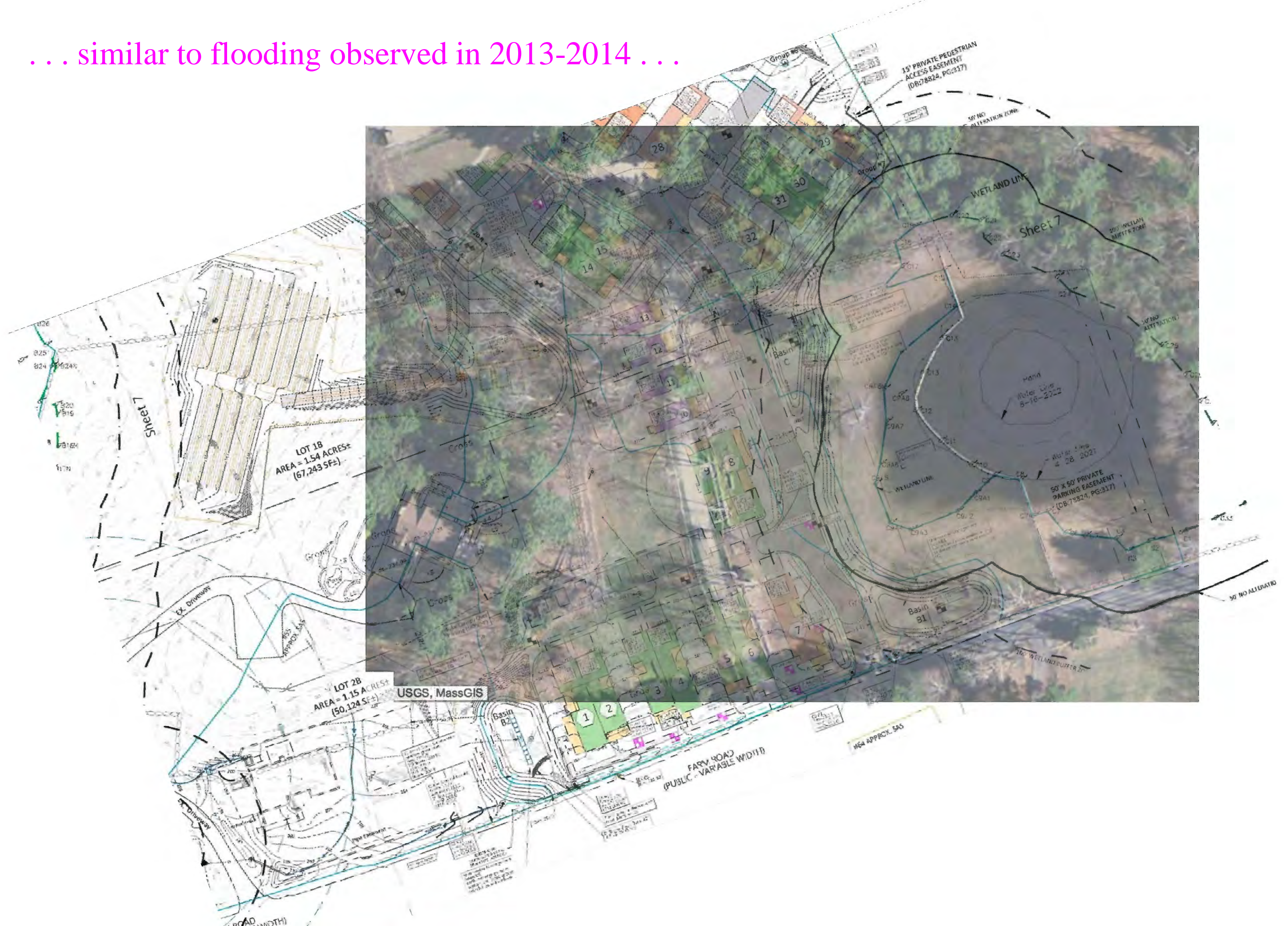
Flooding in 2024 is documented at approximately 216.70 feet elevation.



... the flooded area is documented well beyond the no alteration zone, beyond the existing wetland buffer boundary, across the proposed road, and well into the proposed area of the development ...



... similar to flooding observed in 2013-2014 ...





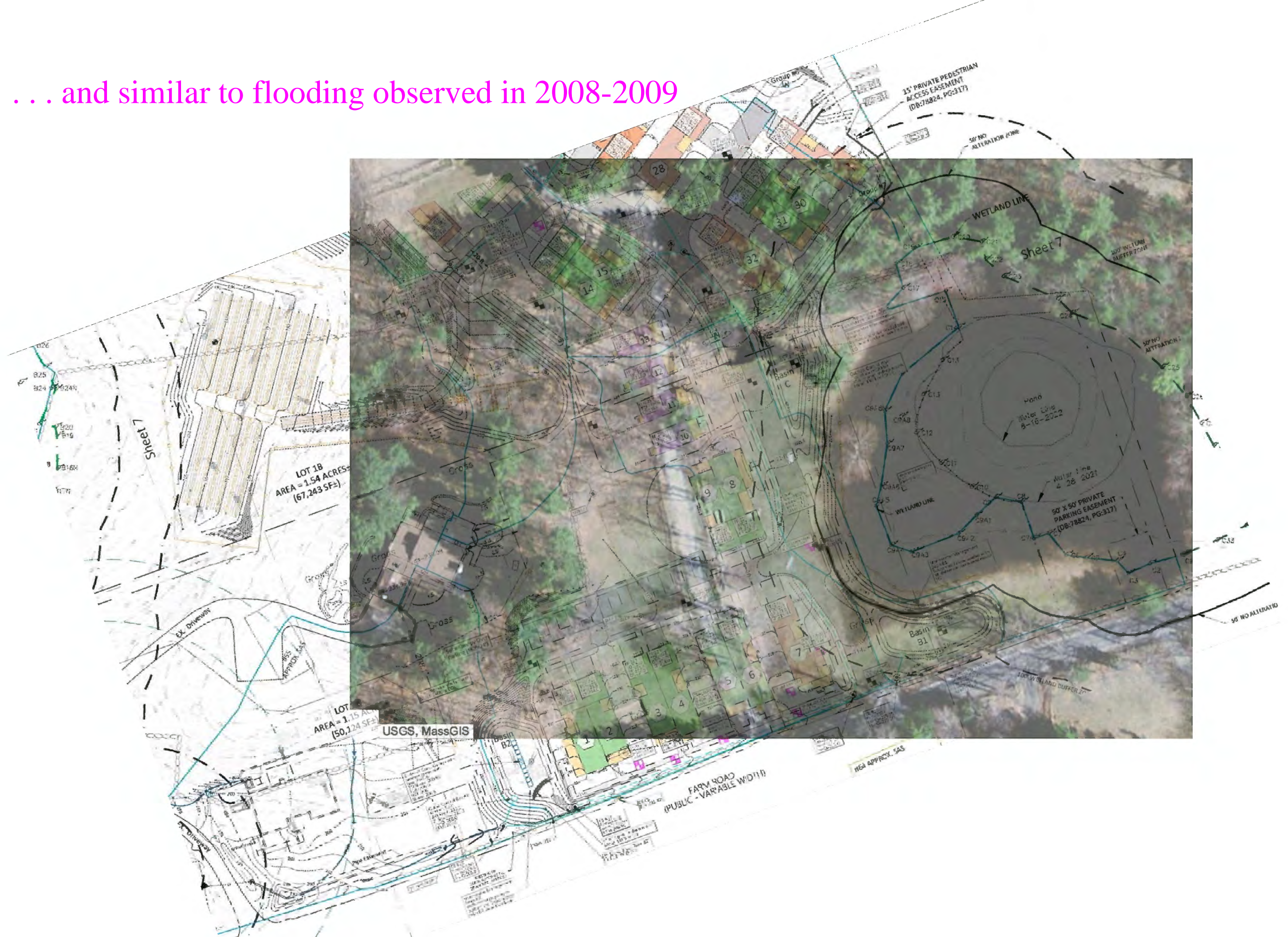
... and similar to flooding in 2011-2012 ...



...over the proposed road at that time too ...

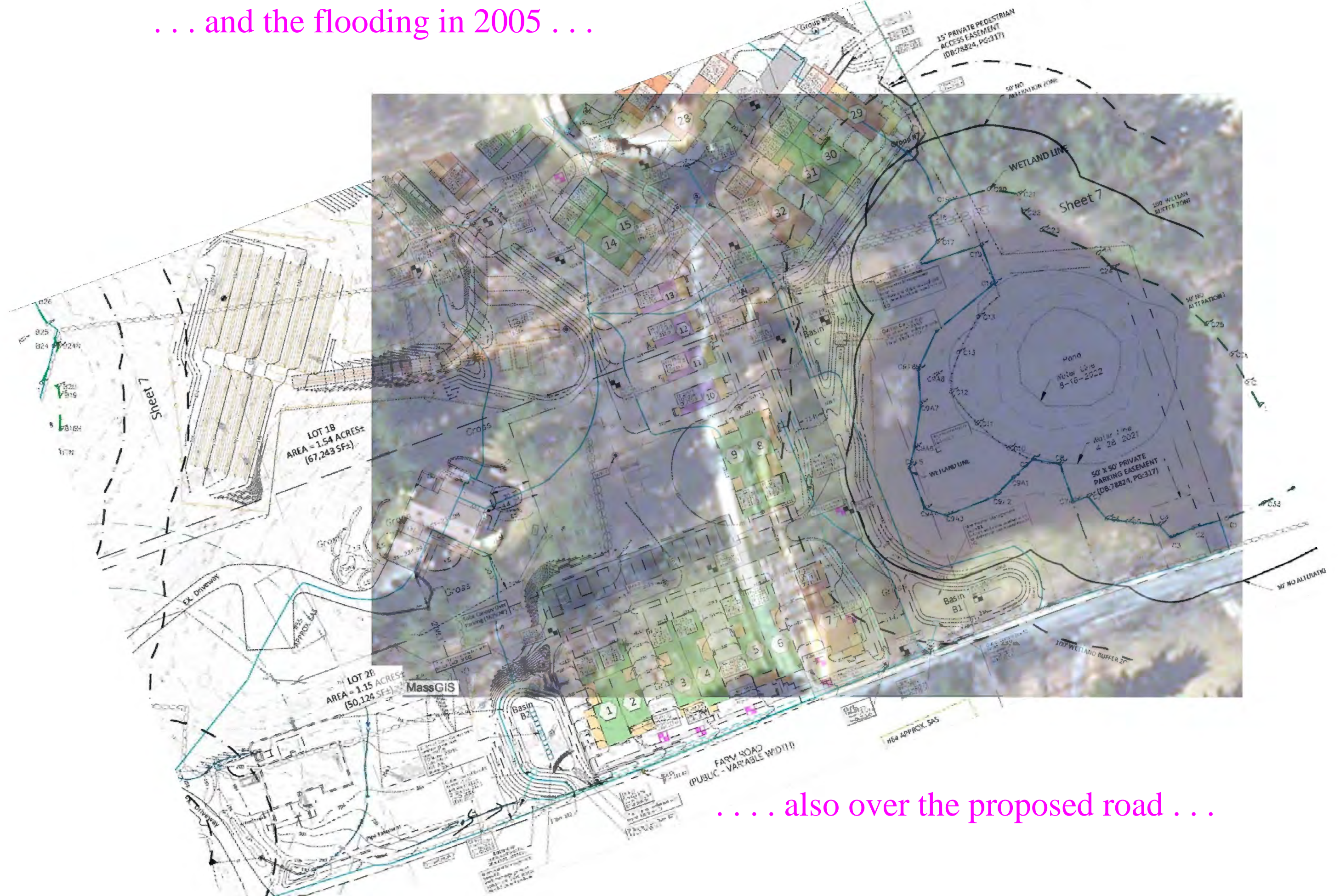


... and similar to flooding observed in 2008-2009





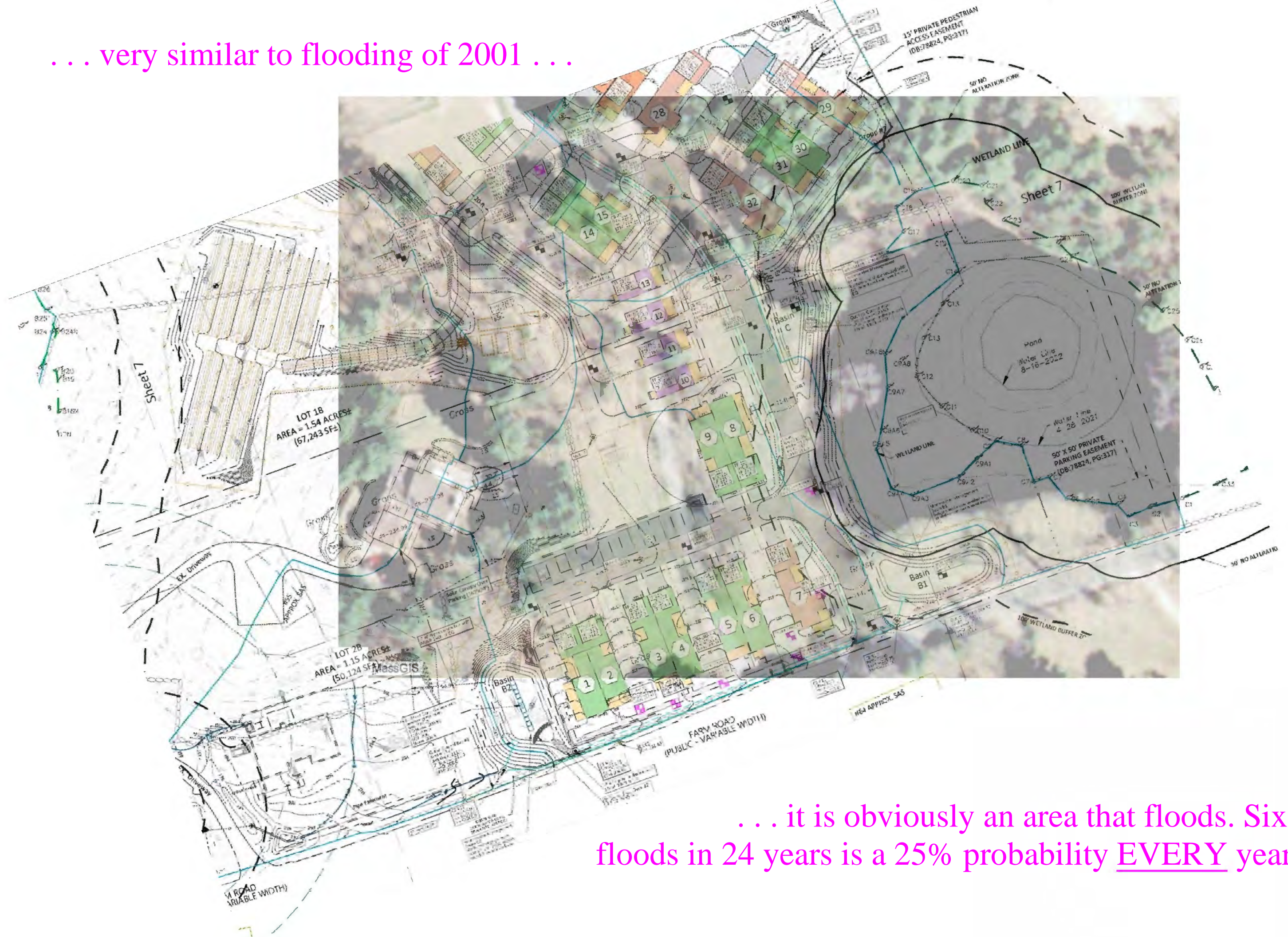
... and the flooding in 2005 ...



... also over the proposed road ...



... very similar to flooding of 2001 ...



... it is obviously an area that floods. Six floods in 24 years is a 25% probability EVERY year.