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January 26, 2017

Mr. Jonathan F.X. O'Brien, Chairman
Zoning Board of Appeals
Flynn Building
278 Old Sudbury Road
Sudbury, MA 01776

**RE: Response to Conservation Commission Comment Memo
Coolidge at Sudbury Phase 2**

Dear Mr. O'Brien and Members of the Board:

On behalf of the applicant Covenant Commonwealth Corporation ("CCC") we are writing in response to the letter from the Sudbury Conservation Commission to the Zoning Board of Appeals ("ZBA") dated January 9, 2017. Below are our responses. We are grateful for their input and believe that it is important to clarify certain matters.

ConComm Comment: *The applicant had not made any attempt to work with or discuss plan revisions with the Conservation Commission. The Commission contacted the applicant and requested they attend the Jan. 3, 2017 meeting to present current plans. The purpose of this meeting was for the Commission to understand the project and provide comments to ZBA. Unfortunately, the applicant was did not bring the project's civil engineer so numerous questions remain.*

Response: On December 27, the Conservation Commission agent requested that the applicant meet with the Commission informally on January 3. Despite the short notice during the holiday period, the applicant attended the meeting with five members of our design/development team, including a representative from LEC Environmental, the applicant's wetlands consultant. Due to the short notice, the project's civil engineer was unable to attend due to a previous commitment. At the meeting, we presented the updated site plan, responded to questions, and received input from the Commission members that were present. The Applicant will be filing a detailed Notice of Intent (NOI) with the Conservation Commission pursuant to the Massachusetts Wetlands Protection Act. The NOI filing materials will include more detailed and engineered site plans, stormwater design and calculations, erosion control, snow storage and construction sequencing information as well as a wetland enhancement report.

ConComm Comment: *The project is in very close proximity to a bordering vegetated wetland with extensive alteration within 100' of the edge of the wetland. This 100' is a designated upland resource area under the Sudbury Wetlands Administration Bylaw. ZBA has review of the project under this bylaw. This upland area performs the important functions of pollution attenuation, wildlife habitat, and flood storage. The development is located up gradient from the wetland sloping directly down to this resource area. As such, the Commission is very concerned with overall runoff from the developed areas entering the wetland. We understand a peer review of*



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stormwater is underway by Horsley Witten for the ZBA. The latest correspondence indicates a number of major issues remain and revised plans will be forthcoming.

Response: In accordance with the procedure for review of the stormwater system as set forth by the ZBA, the peer review by Horsley Witten has been completed and the applicant has addressed each issue raised in the peer review report. As set forth in that response, the applicant will be providing additional information, calculations, and updated plans to further respond to the questions raised by Horsley Witten. CCC will work with both Horsley Witten and the ZBA to address any additional concerns.

ConComm Comment: *The applicant has stated that they will not be providing a Notice of Intent to the Conservation Commission until after a final plan is agreed to with ZBA.*

Response: In accordance with the provisions of M.G.L. Chapter 40B and its implementing regulations, the Comprehensive Permit process is specifically and intentionally designed to be based on preliminary plans. This provides the opportunity for input by the ZBA and other departments of the Town, enabling the ZBA to work with the applicant to make modifications to the plans before they are finalized and fully engineered. CCC has worked closely and collaboratively with the ZBA and, in response to the invitations from the Fire Chief, the Design Review Board, and the Planning Board, has met with—and incorporated input from—the Fire Chief and such Boards whenever possible, modifying the site plan and building design to address various requests and concerns. Likewise, as a result of concerns expressed by the Conservation Commission, CCC has worked to stay as far as possible from the edge of the wetlands while meeting the access requirements of the Fire Chief and other requirements of the Town. Further, described above, the applicant met informally with the Conservation Commission when requested by the Commission to do so. Once the site plan becomes fixed by issuance of the Comprehensive Permit, CCC's civil engineer will fully engineer the site plan and we will submit it to the Conservation Commission for a full review as part of the Notice of Intent process.

ConComm Comment: *The original lot with Coolidge I is being subdivided to form the Coolidge II lot. It appears this is being done to circumvent the DEP sewage cap of 10,000 gpd discharge per lot. Over 10,000 gpd requires additional treatment and a groundwater discharge permit. It appears that Coolidge I and Coolidge II combined produce 13,200 gpd septic effluent (110 gpd per bedroom with a total of 120 bedroom (State Title V septic regulations (310 CMR 15.00). Furthermore, under 310 CMR 15.202, definition of "facility", if the lots as under the same ownership they are considered one lot for Title V purposes. In addition section 15.011 (aggregation) makes it clear that subdivision for the intent of circumventing the requirements for systems over 10,000 gpd is prohibited.*

Response: Please see enclosed legal letter dated January 24, 2017 from Paul Bouton, Partner, of Nixon Peabody (the law firm representing CCC for financing) that addresses this issue in detail and provides assurance that the need to subdivide the Property has nothing to do with Title 5, the existing septic system at Phase 1 of



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The Coolidge at Sudbury, or the proposed septic system at the proposed Phase 2 of The Coolidge at Sudbury, and addresses the issue of aggregation as set forth in the Title 5 regulations.

ConComm Comment: *It is difficult for the applicants to look at Coolidge I and Coolidge II as two distinct projects while sharing access, drainage and driveways. Adequate cross easements should be provided to ensure proper operation and maintenance. The Town should reserve the right, at the owner's expense, to perform necessary neglected maintenance to keep the stormwater system functioning as designed and conditioned by permitting.*

Response: Like many subdivisions and other properties in Sudbury and throughout the Commonwealth, the two projects will share certain facilities, such as access, drainage, and driveways. Such shared facilities are beneficial to the residents and to the Town; in particular, a shared driveway eliminates the need for a separate curb cut on Route 20, streamlining traffic flow and safety. Cross easements will be established to ensure proper operation and maintenance. Maintenance of the stormwater system will be set forth in the Long Term Operation and Maintenance Plan, in accordance with Standard 9 of the Mass DEP Wetlands Protection Regulations.

The applicant expects that the ZBA would include a typical Comprehensive Permit condition similar to one that is included for the initial phase of The Coolidge at Sudbury. To summarize, that condition states that in the event that the owner fails to perform its obligation to maintain the stormwater system as required, after a reasonable notice and cure period, the Town will be permitted to cure the default and the costs incurred by the Town shall constitute a lien on the premises and shall incur interest at the rate of 18% per annum plus cost and reasonable attorney's fees. The actual condition can be found in the 8/8/2011 Comprehensive Permit on Page 19, Condition 6 under the section entitled IX. Maintenance/Inspection.

ConComm Comment: *Has there been a hydrology study? Septic systems in excess of 2000 gpd require this study to prove that groundwater mounding will not occur.*

Response: A preliminary septic design has been completed considering witnessed soil testing and anticipated groundwater mounding similar to Phase 1. Detailed plans and a mounding analysis will be completed and submitted to the Board of Health for review upon completion of the ZBA process.

ConComm Comment: *The proposed contours at the eastern property line show the flow of runoff downgradient to a retaining wall and then off site. This runoff should not be permitted to flow onto the abutting land.*

Response: The proposed contours reflect a slight swaling along the side of the building to minimize runoff leaving the property. Preliminary stormwater calculations have been provided to the ZBA demonstrating compliance with MassDEP Stormwater requirements. We are continuing to work with the ZBA's Peer Review Engineer to finalize the review of these calculations for the ZBA.



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ConComm Comment: *The project utilizes retaining walls to contain grading. The wall around the southeastern end of the building is 8' high. It must be reviewed and approved by a structural engineer.*

Response: The retaining wall around the southeastern end of the building will be designed by a structural engineer licensed in the Commonwealth of Massachusetts.

ConComm Comment: *The plans show a foundation drain along the front of the building. This drain appears to be located only 12' off the septic leaching facility. What will prevent this drain from picking up leachate and conveying it to the stormwater basin? Where does the drain discharge and what design details will prevent scouring and erosion?*

Response: The plans are designed in accordance with 310 CMR 15.211, which establishes the required setback from subsurface drains and which specifically excludes foundation drains.

ConComm Comment: *Will dewatering need to occur? If so, a dewatering plan needs to be provided.*

Response: We anticipate some dewatering may be required. We will work with the Commission during the NOI process to detail acceptable means of dewatering.

ConComm Comment: *The stormwater system collects roof runoff as well as runoff from other impervious surfaces. It is customary to separate roof runoff and to recharge it as close as possible to where it naturally falls. This part of Limited Impact Development design required to be investigated by the state. The Commission would like to see more recharge throughout the site. This would better approximate existing conditions and reduce the size of the stormwater basin and alteration within 100' of the wetland.*

Response: We are not aware of any requirement of MassDEP Stormwater Regulations requiring the separation of roof runoff from other impervious surface runoff. We are not required to treat roof runoff. We cannot provide recharge under the building. We feel the location of the infiltration basin is appropriate given the nature of the existing topography and isolated wetlands which are most likely groundwater seep wetlands.

ConComm Comment: *We see on the plan that waivers are being requested to reduce the required number of parking spaces. Where this is an age-restricted, not assisted living development and very limited public transportation exists, it is not unreasonable to assume that properly-screened tenants will have cars. The Commission is concerned that without enough parking, cars will be parked off of areas where runoff is not collected and treated. This can result in untreated runoff entering the wetland. Other site plan approvals in town with less than required parking have been required to set aside an area for reserve parking should it need to*



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be developed in the future. We do not see a designated reserve parking area or an area where this might even be a potential. It is our experience that older developments on sites with less than the required amount of parking, or parking is too far from the building, result in parking on grassed areas where runoff and drips from cars are not treated (25 Union Avenue in Chiswick Park, Sudbury Farms, Lynch Landscaping on Union Ave., etc.). If the site cannot provide the required number of parking spaces or reserved spaces for the future, we believe it is justification for a reduction in the number of units.

Response: Since, in this case, CCC has access to actual parking statistics for the existing Coolidge project – which has the same demographic profile as the proposed project will have – the applicant undertook a parking study of existing parking patterns to determine the number of spaces needed. A series of 13 actual counts of parked cars were taken on nine separate days, including weekdays, Saturdays, and Sundays, and at various times when peak parking demand would be likely to occur; this includes times ranging from 6:00 am to 10:50 pm, and includes peak visiting times on Saturday and Sunday. The results showed actual parking counts ranging from a low of .53 cars/unit to a peak of .84 cars per unit. The current site plan provides one space per unit; thus, the proposed parking is more than adequate to serve the needs of the project.

ConComm Comment: *There appears to be an approximate 10% grade for 100' of the access road to the garage following a sharp turn to gain entrance to the parking garage from the access drive. We can expect this area to be heavily sanded and salted in the winter. This design will require frequent cleaning of deep sumps to remove sand. This should be reflected in the Stormwater Operation & Maintenance Plan.*

Response: As requested, the use of sand and/or salt on the entrance drive to the parking garage will be reflected in the Long Term Operations and Maintenance Plan.

ConComm Comment: *We did not see any details on the garage drainage. Will there be oil and gas separators? A tight tank? Details on how drainage in the garage is handled is required.*

Response: A garage drain will be required per Massachusetts Building Code. The garage drain cannot and will not discharge to the drainage system, surrounding environs, or the septic system. We will therefore require a small tight tank. The garage drain will only take a very small quantity of water over time from wet vehicle entering the garage. The details of the tight tank including high level indicators will be submitted with the final building plumbing plans.

ConComm Comment: *Sequencing of construction is critical. A current stormwater basin will be eliminated. What is the plan for temporary collection and treatment of runoff during construction? What will be the condition under which the new system is activated?*



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Response: As more detailed plans are developed to support the Notice of Intent, a construction sequencing plan will be developed with input from the project general contractor.

ConComm Comment: *What is the plan for parking for both construction-related vehicles, residents and staff during construction?*

Response: Areas will be designated on site for parking of construction vehicles in quantities and locations that leave adequate parking available for residents and visitors of the existing Coolidge building. If there is a shortage of spaces for construction vehicles on site, an off-site location will be established by the contractor for construction vehicles when needed.

ConComm Comment: *Salt tolerant plant species should be required along the Route 20 frontage. Invasive forsythia should be eliminated. Native species should be incorporated into the planting plan. Stormwater basin should be all native species with a mix of woody shrubs on the side to replace lost wildlife habitat functions.*

Response: The proposed Manhattan Blue Juniper (*Juniperus Virginiana*) is in the native red cedar family and is included on the Sudbury Native Plant List. It is a hearty salt tolerant shrub suitable for the confined space available that will also insure the screening that is desired. In response to this comment, the updated landscape plan (dated 1/17/2017) has been modified and vetted against the native plant list. The forsythia has been removed from the plan.

ConComm Comment: *The local irrigation bylaw does not permit irrigation wells within 100' of wetlands. The irrigation well appears to be approximately 70' from the wetland. At a minimum, the applicant should perform a drawdown test to ensure that the well will not draw water down from the surface wetland. A limit of lawn/landscaping line should be added to the plans.*

Response: The proposed irrigation well will be relocated outside the 100 foot wetland buffer.

ConComm Comment: *The applicant and owner should be added to the Title Sheet.*

Response: The applicant and owner will be added to the title sheet, as requested.

ConComm Comment: *We do not see a designated area for trash collection.*

Response: The proposed building will have an interior trash room similar to the Phase 1 building.

ConComm Comment: *Erosion control was not shown on the plan.*



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Response: Erosion control is not typically shown on preliminary plans; erosion control measures will be shown and detailed on the fully engineered plans to be submitted to the Conservation Commission as part of the Notice of Intent filing pursuant to the Massachusetts Wetlands Protection Act.

ConComm Comment: *We do not see a designated area for snow storage. Snow removal guidelines should be developed for the site. Snow may need to be trucked off site to an approved disposal facility in some storm events.*

Response: Designated snow storage areas will be shown on the fully engineered plans that will be submitted to the Conservation Commission as part of the Notice of Intent filing, along with snow removal guidelines. As is the practice at the existing Coolidge building, excess snow will be trucked off site when necessary.

ConComm Comment: *The wetland scientist from LEC advised the Commission that wetland enhancement will be limited to removal of invasive vines that are choking the trees. No broad invasive species removal is proposed. With the elimination of much of the 100' upland resource area, at a minimum the remaining land within 100' of the wetland should be enhanced to perform at its maximum capability to protect the public interest of wetlands. Opportunities exist for this to occur.*

Response: In response to a question from a Conservation Commission member during the applicant's informal presentation to the Commission on January 3, Rich Kirby, the wetland scientist from LEC Environmental, suggested that in his opinion, the best results from invasive species removal would be achieved by the removal of vines that are currently choking trees. He further opined that attempts at wholesale removal of invasive species from large areas usually fails due to re-seeding which occurs naturally. The applicant intends to have further discussions with the Conservation Commission regarding wetland enhancement as part of the Notice of Intent process.

ConComm Comment: *The Commission finds it unacceptable that many of the details necessary to assess compliance are not being provided until the commencement of work. These details, the stormwater best management practices for example, are necessary during the review process to ensure a properly designed and functioning site and allow review and discussion during the public hearing process. All MA Stormwater Handbook recommendations should be followed; i.e. There should be the recommended amount of freeboard provided in the stormwater basin.*

Response: As described above, the Comprehensive Permit process was intentionally established under M.G.L. Chapter 40B to be based on preliminary drawings to facilitate the process of review and approval of affordable housing developments. However, fully engineered drawings will be submitted to the Conservation Commission as part of the Notice of Intent process, and no work can commence until an Order of Conditions has been issued and recorded. As set forth in the peer review by Horsley Witten Group, the stormwater system must comply with and meet all of the Standards set forth in the Massachusetts Stormwater Handbook.



In addition, as is typical, the applicant expects a condition in the Comprehensive Permit Decision prohibiting construction until such time as the Comprehensive Permit Plan had been submitted for review, approval and endorsement by the ZBA for consistency with the Decision, final stormwater plans have been submitted to the DPW Director for review to confirm the consistency of such plans with the Comprehensive Permit Plans, final architectural plans have been submitted to the ZBA for review to confirm the consistency of such plans with the Comprehensive Permit Plans, and the final building plans have been submitted to the building inspector for review to confirm consistency of such plans with the Massachusetts Building Code.

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ConComm Comment: *In summary and from the limited information provided, the Commission has concerns that the development may be too ambitious for the site and the size of the building should be scaled back to allow some level of stormwater recharge outside of the stormwater basin, disconnect the roof runoff from the piped system, and provide a larger buffer with maximum enhancement of wetland values and functions. We believe that the location of the development is appropriate for this type of project and are pleased to see at least partial reuse of previously disturbed areas. However, the project appears to push all limits and rely on a questionable creation of two lots to allow an excessive amount of sewage effluent to be discharged into a small area.*

Response: The applicant agrees that the location of the development is appropriate for this project and it re-uses previously disturbed areas to the extent possible. The site is adequate to support the proposed development in that all requirements, criteria, and standards as established by state regulations for stormwater design, recharge, wetland buffers, wastewater disposal, etc. are being met or exceeded.

We look forward to working further with the ZBA to answer any additional questions it may have.

Sincerely,

Susan Gittelman, Executive Director

Enclosure

CC:

Deborah Dineen, Conservation Agent

Joe Peznola, Hancock Engineering



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January 24, 2017

Jonathan F. X. O'Brien, Chair
Zoning Board of Appeals
Town of Sudbury
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278 Old Sudbury Road
Sudbury, MA 01776

Re: The Coolidge at Sudbury – Phase 2
Clarification Regarding Subdivision of Property

Dear Chairman O'Brien and Members of the Zoning Board of Appeals:

This firm represents B'nai B'rith Housing New England, Inc., as project sponsor, on behalf of its development entity Covenant Commonwealth Corporation (collectively, the "Applicant"), regarding Phase 2 of The Coolidge at Sudbury. It has come to our attention that a question has arisen regarding the need to subdivide the Property located at 189 Boston Post Road, Assessor's Map K100-0012 (the "Property"). More specifically, we understand that there is a concern that the reason the Applicant seeks to subdivide the Property is to circumvent certain requirements of Title 5 of the Environmental Code of Massachusetts, 310 CMR 15.000, *et seq.* The purpose of this letter is to assure you that the need to subdivide the Property has nothing to do with Title 5, the existing septic system at Phase 1 of The Coolidge at Sudbury, or the proposed septic system at the proposed Phase 2 of The Coolidge at Sudbury, and to address the issue of aggregation as set forth in the Title 5 regulations.

The Coolidge at Sudbury (Phase 1) contains 64 units of low-income housing for seniors ages 55 and older. CCC Post Road Limited Partnership is the borrower of Phase 1.

The Applicant seeks to construct and operate Phase 2, which is proposed to include 56 units of housing for seniors, and associated parking and amenities. As stated in the Phase 2 Comprehensive Permit application submitted to your Board, should the Board grant the Comprehensive Permit, the Applicant will assign the Comprehensive Permit to a related yet-to-be designated limited partnership that will be the owner of Phase 2. This limited partnership will be the Phase 2 equivalent of CCC Post Road Limited Partnership.

In order for the Phase 2 owner to finance Phase 2, Phase 2 needs to have its own lenders and investors. To accomplish that, Phase 2 needs to be built on a separate legal lot, so that the Phase

2 lenders can have mortgages on just Phase 2. The Phase 1 property cannot be subject to the Phase 2 financing, and vice versa. That is the reason the Applicant is seeking to subdivide the Property, and it would be seeking to do so even if there were municipal sewer service available for Phase 1 and/or Phase 2. If Phase 2 was not being built on a separate parcel, based on my experience, Phase 2 would not be financeable.

With respect to Title 5 of the State Environmental Code (310 CMR 15.00 et seq.), each phase is a separate "Facility" as defined in 310 CMR 15.002 because each phase is owned by separate owners and under separate control. The proposed subdivision is not an attempt to subvert the "aggregation" policy of the Massachusetts Department of Environmental Protection, set forth in the Title 5 regulations at 310 CMR 15.011. Just as Phase 1 and Phase 2 will be owned by separate limited partnerships, the septic systems will be completely separate and will not be shared. Therefore, it is our opinion that under the Massachusetts Department of Environmental Protection regulations as set forth in the Title 5 regulations at 310 CMR 15.002, 15.010 and 15.011, the two projects will constitute facilities which are in separate ownership and control and are not subject to aggregation which would treat them as a single "facility".

We hope this letter is helpful and allays any concerns raised during the Phase 2 Comprehensive Permit process with respect to the need for a subdivision of the Property. Thank you for your time and attention to this matter. Please let me know if I can answer any questions or help in any way.

Sincerely,

Handwritten signature of Paul E. Bouton in blue ink, with the initials 'RHS' written at the end of the signature.

Paul E. Bouton

cc: Susan L. Gittleman
Holly Grace