

*Electronic Delivery*

October 3, 2023

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

**Re: Additional Comments on Farm Road Homes -  
Restriction and Stormwater Management Plan**  
Farm Road Homes Project  
55-65 Farm Road  
Sherborn, MA

Chairman Novack:

Mary and I have composed this brief additional letter related to the Farm Road Homes project being proposed by Fenix Partners Farm Road, LLC (Fenix) at the abutting 53-55-65 Farm Road property. This obviously is intended to serve as additional information we would like the Zoning Board of Appeals (ZBA) to consider during their review of this project.

### **Additional Restriction Information**

The records we have obtained from Massachusetts Department of Environmental Protection (MassDEP) show that Fenix applied for the preliminary determination with MassDEP (under the name Fenix Partner Farm Road LLC) in approximately October 2022. At that time, the MassDEP's review of the information provided yielded a Letter Notifying them of deficiencies in their submittal along with a series of questions focused on the proposed private well locations.

Most notably, MassDEP sought clearer information as to the use of the area noted as "Town Forest" specifically asking if there was a conservation restriction. Although no direct records are available as to how these questions were answered (e.g., verbally over the telephone, email, etc.), the MassDEP did provide a reproduction of the Deed that granted the Lot 3B Land to the Town of Sherborn Conservation Commission.

Fenix is using and citing this conservation restriction to their benefit in their dealings with MassDEP, while at the same time in their public hearings with ZBA, they are ignoring the fact that this gifted parcel was, in fact, part of a common scheme to preserve land to benefit the inhabitants of the Town of Sherborn. The land gifted to the Town would not be in its native state had the previous owners not come up and implemented the common scheme for the four (4) parcels.

We encourage the ZBA to consider this fact, noting that Fenix is actually relying on the conservation restriction in his dealings with MassDEP in order to further avoid regulation under 310 CMR 22.00 for this development – a conservation restriction whose genesis lies within the same common scheme which we believe still exists on the remaining parcels.

Copies of these records are contained in Attachment A.

## Stormwater Management Plan

We have reviewed the Stormwater Management Plan (the Plan) provided to the Town of Sherborn for this development. The Plan itself is littered with erroneous statements and we encourage the ZBA to demand its withdrawal. The following is an incomplete and short list of obvious information that is factually incorrect from the submitted Plan:

- The Plan erroneously refers to a 4 lot subdivision, whereas the Farm Road Home project actually contains 32 units.
- The Plan erroneously refers in multiple places to activities that would take place, or monitoring efforts, along Jennings Road – no such road exists in Sherborn.
- The Plan erroneously refers to the underlying soil and being Narragansett sandy soil, whereas no such soils underlie the property.
- Some of the certifications provided in the Plan were executed and certified on August 25, 2022 – about a year before the Application for a Comprehensive Permit was filed with the ZBA.
- The Plan references in places Natick Conservation Commission – a regulatory body from an entirely different municipality that has no jurisdictional powers over this project or property.
- The Plan relies on assigned hydraulic conductivity values on the 1.0E+01 feet per day order of magnitude – a value that allows the applicant to apply the characteristics of well-sorted beach sands to material that has otherwise been characterized as till.
- The Plan relies on one (1) stormwater outlet being connected to a culvert situated on a neighboring residential parcel at 53 Farm Road – a structure that was installed contingent upon a waiver clause in the Wetlands Protection Act with Sherborn Conservation Commission and MassDEP for single family home residential development (refer to previous letter dated 9/26/23, 3 paragraph, page 5).
- The Plan relies on mounding analyses that employs a thickness of the aquifer of between 16 and 20 feet – while bedrock has been encountered in the areas of these drainage basins at depths as shallow as 7 feet below grade.
- The Plan indicates forty-two (42) test holes have been advanced, but not all of the test hole records appear to be available in the record for review (e.g., we could not locate Test Hole 55-9N record in any submittal).
- Despite the wildly ranging soil type, depth to bedrock, and estimated high groundwater elevations, the Plan for two (2) of the four (4) proposed basins were not subjected to any field testing or test pits – meaning that only about one-half (50%) of the proposed system setting has actually been subjected to critical field inspection and testing work, and we are not sure what percentage of that half has been appropriately witnessed.

## Recommendations

We are very, very concerned that the Town of Sherborn ZBA, as well as other Town Boards and Commissions, are having to review and critique incomplete and/or erroneous plans. The application, as received, is at its best entirely incomplete and erroneous. We believe that the applicant should be afforded all rights and opportunities to proceed with this process, but in doing so they should not be burdening the Town Boards with the obligations of fixing such glaring errors and omissions. It is absurd that the taxpayers and volunteers of Sherborn should have to waste their time correcting the applicant's shortcomings - simply to then turn around and critique the very corrections they were involuntarily conscripted to right.

We believe **the litany of errors, omissions, and typographical errors contained in the application** is alarming and calls into question all the associated conclusions and design recommendations for this project. The inability to adhere to such basic, fundamental principles is disquieting and raises serious concerns about the validity of any scientific and engineering representations being made by the applicant for this project.

How can such obvious inaccuracies and erroneous representations of site conditions like depth to bedrock, groundwater elevations, depth to water, soil type, hydraulic permeability, and saturated thickness be ignored when the Town Boards and Commissions have been tasked with eliminating any risk(s) to public health arising from the project under consideration? Town Boards, Committees, and third party experts will not be able to rely on or validate any of the conclusions when such fundamental principles of precision, accuracy, reproducibility are so obviously unreliable.

We therefore recommend and request that ZBA provide Fenix the opportunity withdraw their application for a Comprehensive Permit under MGL c. 40B for the Farm Road Homes. We concede that such an action may have to be offered without prejudice, but we assert that the Town has a fundamental right to receive an application that is true, accurate, and correct.

We also recommend that any further consideration of this project, either as-is or revised subsequent hereto, include the following, at a minimum:

- 1> Calculations for the actual stormwater retention/capacity of the Pond at those levels previously depicted in orthographic exhibits/attachments we have previously provided. Any project should, at a minimum, be able to contain 100% of that capacity given that the frequency and severity of precipitation events are growing ever more common. These calculations should also have a 1:500 flood event values included for reference relative to existing and projected conditions to ensure some buffering capacity exists to protect future residents of Farm Road Homes.
- 2> Elimination or permitting the project connection to 53 Farm Road with the proper jurisdictional body. The 53 Farm Road residential culvert connection on which the Plan relies discharges directly to the wetland area subject to protection under the Wetlands Protection Act, and was installed under a waiver from the stormwater management requirements contingent on single-family residential development.

Most remarkably, Fenix has at no point discussed reducing the overall size or scope of this project to something more suitable and aligned with other property development along the Farm Road Great Rock Road neighborhood. Based on the fact that such a tiny portion of these homes have been designed to satisfy the “affordable” clause for the purpose of improving Sherborn’s SHI, the applicant could easily reduce the size of this project while still progressing the affordable housing stock towards the desired 10% goal. Such an action may go a long way towards assuaging fears and concerns related to the risk(s) of public harm that the current project appears to pose given the enormity of its impact on the valuable and limited resources of clean potable water in this portion of Town.

Thank you very much for your attention in these matters. We appreciate having this opportunity to table our concerns – concerns shared by many residents of the Farm Road and Great Rock Road neighborhood - 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**

**Reproductions of MassDEP Records from  
Preliminary Determination Review Submittal**

Certification

**NOTE: Capitalized terms used in this document shall have the meaning set forth in the Key to Terms, which is attached to and made a part of this document, as applicable.**

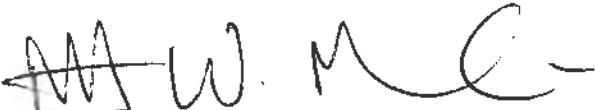
I, Fenix Partners Farm Road, LLC, Applicant, am the owner in fee simple of that certain parcel of land located at 55 and 65 Farm Road, Sherborn, Middlesex County, Massachusetts, with the buildings and improvements thereon, pursuant to a deed from Ioannis Miaoulis and Trinity Farm, LLC, Grantors, dated January 11, 2021 and October 1, 2021 and recorded with Middlesex South Registry of Deeds in Book 76660 and 78824, Page 253 and 317, said parcel being more particularly described as "REMAINING LAND" in **Exhibit A**, attached hereto and made a part hereof, and being shown on a plan entitled "ANR PLAN of LAND in Sherborn Massachusetts Middlesex County", dated February 24, 2022, prepared by Samiotes Consultants, Inc, and recorded with Middlesex South Registry of Deeds as Plan No. 284 in Plan Book 2022.

This Certification is a part of an Information Submittal I make to the Department to address the matters in the Minimum Recommended Information List, in support of my request not to regulate each Drinking Water System I have identified in the Information Submittal as a Public Water System.

In furtherance of my request, I have investigated all relevant information, consulted with trained professionals as appropriate, and state, to the best of my knowledge and belief, that I have provided to the Department truthful, accurate and complete information in my Information Submittal.

I hereby acknowledge that, if I become aware of any substantive changes in the information I have submitted, I have an ongoing duty to notify the Department of such changes and to provide an updated submittal in advance of the Department's issuance of the Determination I have requested.

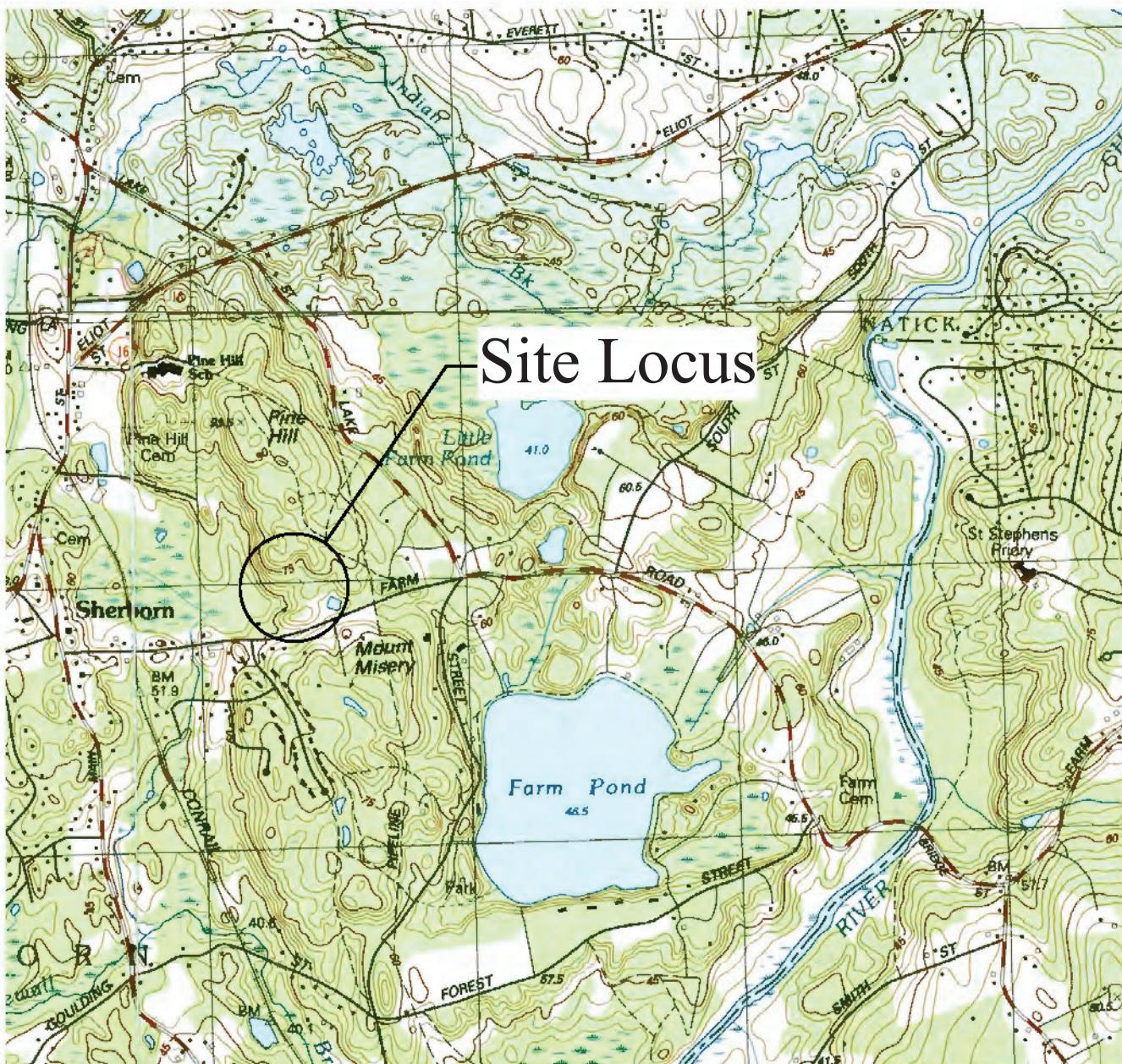
Signed under penalty of perjury, this 1st day of October, 2022.



[signature of Applicant]

Manager, Fenix Partner Farm Road, LLC

Robert W. Murchison



0 2,000

Scale in feet



**Figure 1. Site Locus.**

Base Map: MassGIS Quads.

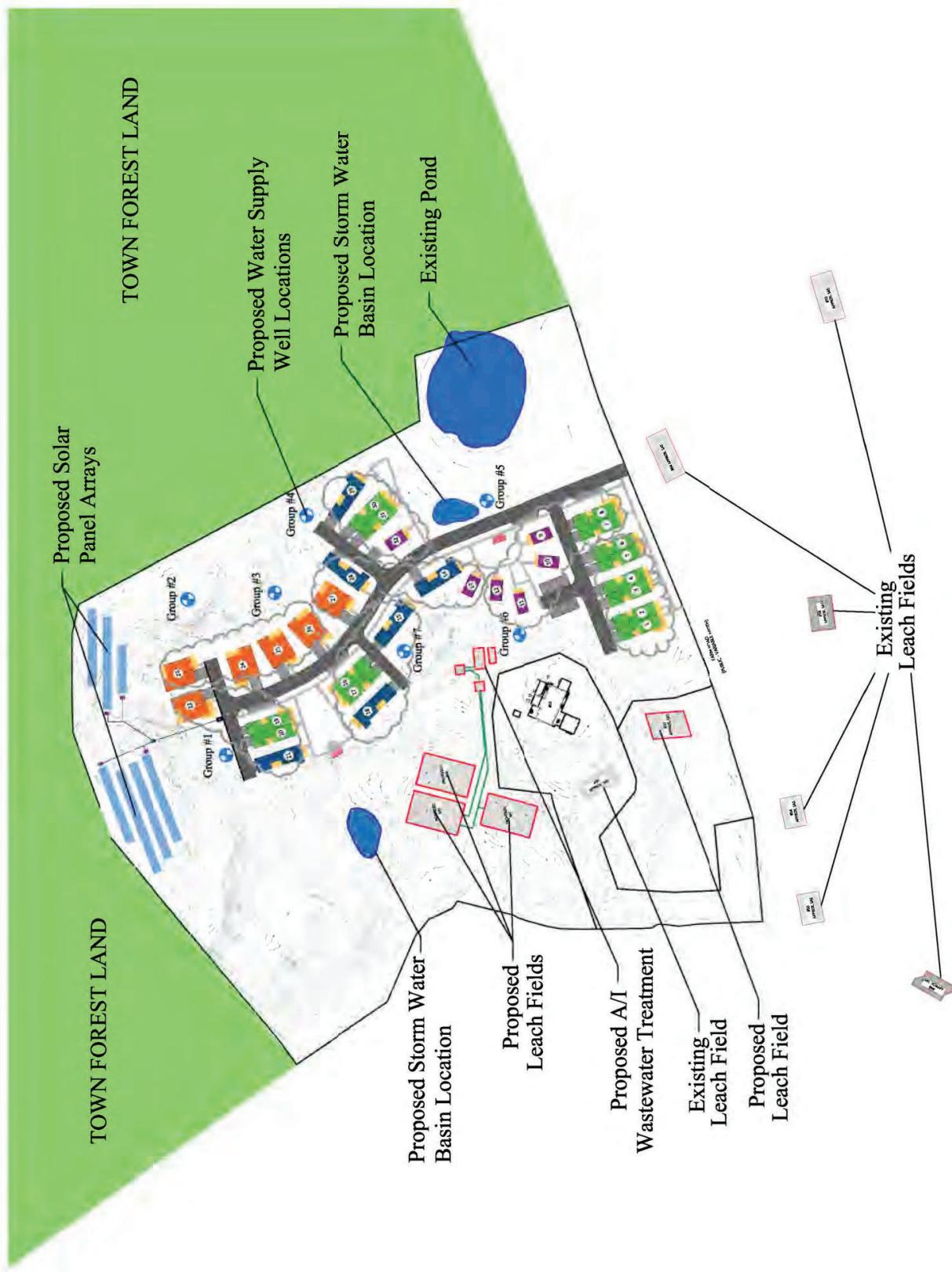
GeoHydroCycle, Inc.

Project No. GHC#22008  
Drafted SWS  
Date 9/12/22

**Farm Road Homes**  
**55/65 Farm Road**  
**Sherborn, MA**

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 2. Site Features.



Project No. GHC#22008  
Drafted SWS      Rev 9/12/22  
Date 6/30/22      Base Map: AutoCAD file from  
CLAWE.

GeoHydroCycle, Inc.

**Private Well Option**  
**55/65 Farm Road, Sherborn, MA**

**Table 1. Private Well Group Details.**

Group	Bedrooms	Well (GPD)	Radii	
			Equiv Zone I	DW Source (FT)
1	10	2,000	145	444
2	12	2,400	157	453
3	11	2,200	151	449
4	9	1,800	138	440
5	12	2,400	157	453
6	12	2,400	157	453
7	<u>10</u>	2,000	145	444
	<u>76</u>			

**Notes:**

1. In compliance with Guideline #88-10, water use is assumed to be 100 gallons per day per person and each bedroom is assumed to contain 2 people.
2. Wells would be privately owned.

**Private Well Option**  
**55/65 Farm Road, Sherborn, MA**

**Table 2. Land Use Pollution Threat Assessment.**

**Uses Within Equivalent Zone I:**

Agricultural - None  
 Commercial - None  
 Industrial - None  
 Residential  
     R1. Lawn/Garden Care (M)  
     R2. Septic Systems (M)

Miscellaneous  
     M1. Aquatic Wild Life (L)  
     M2. Storm Water Drains/Basins (L)  
     M3. Very Small Hazardous Waste Generator (L)  
     M4. Wastewater Treatment Plants (M)

WELL GROUP	R1	R2	M1	M2	M3	M4	DWSA with "High" Ranking
1	M	M	-	L	L	-	-
2	M	M	-	L	L	-	-
3	M	M	-	L	L	-	-
4	M	M	-	L	L	-	-
5	M	M	L	L	L	-	-
6	M	M	-	L	L	M	-
7	M	M	-	L	L	M	-

**Notes:**

1. PSC Threat Ranking:
  - L - Low Risk
  - M - Medium Risk
  - H - High Risk

2. "R2 Septic Systems" refers to piping from homes to the Wastewater Treatment Plant.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 3. Well Group 1.



GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Equivalent Zone I Circle  
Drinking Water  
Source Area

Figure 4. Well Group 2.



GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 5. Well Group 3.



Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 6. Well Group 4.



Project No. GHC#22008  
Drafted SWS  
Date 6/30/22 Rev 9/12/22  
Base Map: AutoCAD file from  
CLAWE.

GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 7. Well Group 5.



Project No. GHCH#22008  
Drafted SWS Rev 9/12/22  
Date 6/30/22 Base Map: AutoCAD file from  
CLAWE.

GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 8. Well Group 6.



Project No. GHCH#22008  
Drafted SWS Rev 9/12/22  
Date 6/30/22 Base Map: AutoCAD file from  
CLAWE.

GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 9. Well Group 7.



0 100  
Scale in feet

Project No. GHCH#22008  
Drafted SWS Rev 9/12/22  
Date 6/30/22 Base Map: AutoCAD file from  
CLAWE.

GeoHydroCycle, Inc.



# Department of Environmental Protection

Northeast Regional Office • 150 Presidential Way Woburn, MA 01801 • 978-694-3200

Maura T. Healey  
Governor

Kimberley Driscoll  
Lieutenant Governor

Rebecca L. Tepper  
Secretary

Bonnie Heiple  
Commissioner

April 4, 2023

Robert Murchison  
Fenix Partners Farm Road, LLC  
177 Lake Street  
Sherborn, MA 01770

**RE: Sherborn**  
Request for Determination of Applicability  
310 CMR 22.02(1)  
**Notice of Incomplete or Deficient Submittal**

Dear Mr. Murchison:

On October 1, 2022, Fenix Partners Farm Road, LLC, of the above-listed address submitted to the Massachusetts Department of Environmental Protection (“MassDEP”) a request for a determination pursuant to 310 CMR 22.02(1) that a proposed drinking water system to be located at 55-65 Farm Road in Sherborn, Massachusetts, (the “Drinking Water System”) should not be regulated as a Public Water System subject to the Massachusetts Drinking Water Regulations, 310 CMR 22.00 (“the Regulations”).

**MassDEP has completed its administrative review of the materials submitted and has determined that the materials provided do not contain sufficient information to complete the review. The deficiencies that have been identified with the documentation submitted to date are outlined below under the heading “Comments & Submittal Requirements.” To address these deficiencies, the additional information requested by MassDEP should be submitted.**

**Please submit the requested information as quickly as possible, but within 90 days from the date of this letter to ensure completion of the review in a timely manner. If you fail to submit the additional information within the timeframe above, MassDEP will determine the review request as withdrawn, and will terminate its review without further notice.**

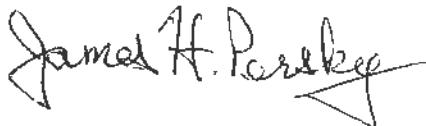
If you have questions about the requested information, or if you require additional time to prepare and submit the requested information, please contact James Persky by telephone at (781) 223-4827, e-mail at James.Persky@mass.gov, or at the above address, no later than 90 days from the date of this letter.

**Comments & Submittal Requirements:**

1. The Zone I Equivalent Areas<sup>1</sup> for the wells for Groups #2, #3, and #4 extend onto the adjacent property to the east. This parcel is owned by the Town of Sherborn and is shown on the site map as Town Forest land. Does the Town have this land under a Conservation Restriction?
2. The site maps provided suggest that the existing house on the property will be subdivided from the rest of the parcel. The Zone I Equivalent Area for the Group #6 well extends onto the house parcel. How will the Group #6 well be protected against potential future land use activities on the house parcel?
3. The site maps suggest that the Group #5 well is less than 20 feet from a proposed stormwater basin. Is this proposed as a retention basin with an impermeable bottom or a leaching basin? While the Town's private well regulation does not indicate a setback requirement for leaching basins, its proximity is close enough to the well that it may pose a potential bacterial threat. Please provide additional specifications regarding the proposed stormwater basin.
4. The submittal does not include any Source Protection Measures<sup>1</sup>. The septic system is considered a "Moderate" potential pollution threat because of the wastewater piping from the residential units to the alternative/innovative treatment system. Are there any Source Protection Measures planned for implementation that would be useful in this regard? Lawn care will also pose a "Moderate" threat adjacent to the wells. Turf care products often include both fertilizer and herbicides. Is there any Standard Operating Protocol (SOP) being developed for the groundskeepers to prevent overuse or ensure limited use of lawn chemicals near the wells?

Please be advised that any proposed or existing Drinking Water System that has not obtained a MassDEP determination that it should not be regulated as a Public Water System, remains subject to regulation under 310 CMR 22.00, as applicable.

Sincerely,



James H. Persky  
Environmental Analyst  
Drinking Water Program



Kristin L. Divris  
Deputy Regional Director  
Bureau of Water Resources

cc: DWP/Boston Office (no attachment)  
Stephen W. Smith, GeoHydroCycle, Inc., 5 Madison Avenue, Newton, MA 02460  
Sherborn Board of Health, 19 Washington Street, Sherborn, MA 01770

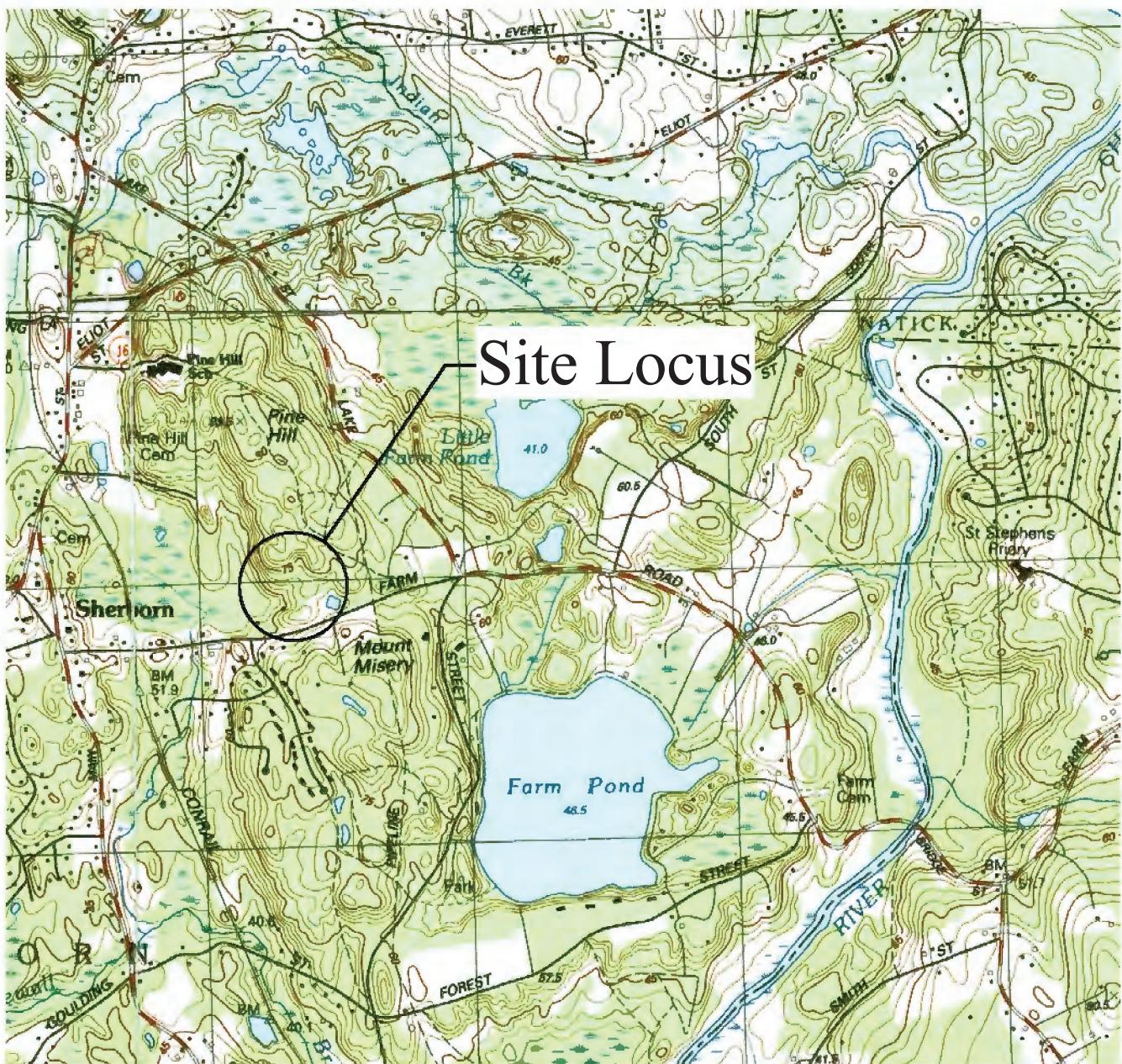
<sup>1</sup> As defined in the "Key to Terms" document for the PWS Applicability Review Request

**The following is draft language to be used in the Condominium Master Deed. This paragraph is for Well Group #1 and additional paragraphs would be similarly inserted for Well Group #2, #3, #4, #5, #6 and #7.**

**The Condominium Master Deed would also contain a provision restricting occupancy to two people per bedroom.**

*Section 6.4: Exclusive Rights and Responsibility with Respect to Water Supply Wells:*

Notwithstanding any other provision of the Master Deed or Declaration of Trust, the Owners of Units 19, 20, 21 and 22 shall have the exclusive right and obligation as Owners to maintain and operate, and if necessary, make capital improvements in connection with Well #1 for the supply of water to their respective Units. This exclusive ownership right and obligation shall include the right and obligation to maintain, repair or replace the wells themselves, their distribution lines, any storage tank, and their supply lines to their Units, and any other appurtenance to those specific Wells. The Owners of Units 19, 20, 21 and 22 shall have the right and obligation as Owners, unfettered by any other Unit Owner, to make such decisions as they deem necessary or prudent to assure a continuous supply of potable water to their units from Well #1 and shall each have responsibility for one-fourth of the costs of maintaining and operating Well #1. Similarly, the Owners of Units 19, 20, 21 and 22 shall have no right to participate in any decisions made by other Unit Owners who have been granted exclusive right to determine the maintenance or repair obligations, or need for capital improvements of Wells #2, #3, #4, #5, #6 and #7 or their appurtenances. This sub-group of Unit Owners responsible for Well #1 may, at their discretion, create and maintain a separate monetary reserve, to fund the costs or anticipated costs, of any Well #1 expense. The decisions of the sub-group shall be by majority vote of the Unit Owners who comprise the sub-group, limited to one (1) vote per Unit.



0 2,000

Scale in feet



Figure 1. Site Locus.

Base Map: MassGIS Quads.

Project No. GHC#22008  
Drafted SWS  
Date 9/12/22

GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA



Figure 2. Site Features.



Project No. GHCH#22008  
Drafted SWS Rev 5/25/23  
Date 6/30/22 Base Map: AutoCAD file from CLAWE.

GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 3. Well Group 1.



Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Equivalent Zone I Circle  
Drinking Water  
Source Area

Figure 4. Well Group 2.



GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 5. Well Group 3.



Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 6. Well Group 4.



Project No. GHCH#22008  
Drafted SWS Rev 5/25/23  
Date 6/30/22 Base Map: AutoCAD file from  
CLAWE.

GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 7. Well Group 5.



0 100  
Scale in feet

Project No. GHCH#22008  
Drafted SWS Rev 5/25/23  
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GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Equivalent Zone I Circle  
Drinking Water  
Source Area

Figure 8. Well Group 6.



GeoHydroCycle, Inc.

Farm Road Homes  
55/65 Farm Road  
Sherborn, MA

Figure 9. Well Group 7.



GeoHydroCycle, Inc.

## SHERBORN CONSERVATION COMMISSION

We, RICHARD SALTONSTALL, individually, of 174 Farm Road, Sherborn, Middlesex County, Massachusetts, DUDLEY H. WILLIS and SALLY S. WILLIS of 216 Farm Road, Sherborn, Middlesex County, Massachusetts, husband and wife as tenants by the entirety, each of such two interests being held as tenants in common with the other one, for consideration of less than one hundred (100.00) dollars grant to the TOWN OF SHERBORN CONSERVATION COMMISSION, (address of grantee: Town Office Building, P.O. Box 78, Main Street, Sherborn, Massachusetts 01770) for CONSERVATION PURPOSES ONLY and with QUITCLAIM COVENANTS

a certain parcel of land, situated in Sherborn, Middlesex County, Massachusetts and being shown as Lot 3B on a plan of land entitled "Plan of Land in Sherborn, Massachusetts" by Schofield Brothers, Inc., 1071 Worcester Road, Framingham, Massachusetts, dated October 15, 1981, duly recorded at the Middlesex South Registry of Deeds herewith.

Said parcel being more particularly bounded and described as follows:

Beginning at the southeasterly corner thereof at the northerly side of Farm Road at land now or formerly in the ownership of Richard Saltonstall, Dudley H. Willis and Sally S. Willis.

Thence running southwesterly by Farm Road by five courses measuring 74.30 foot, 72.45 foot, 82.60 foot, 85.24 foot and 33.36 foot to a point;

Thence running northwesterly by land now or formerly owned by Gilbert H. Mudge, Jr. and Barbara J. Mudge shown as Lot 3A on such plan by one course measuring 250.00 foot to a point;

Thence running westerly by land now or formerly owned by Gilbert H. Mudge, Jr. and Barbara J. Mudge shown as Lot 3A on such plan by one course measuring 99.82 foot to a point;

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running

Thence/northwesterly by land now or formerly owned by Gilbert H. Mudge, Jr. and Barbara J. Mudge shown as Lot 2 on such plan by one course measuring 623.76 feet to a point;

running

Thence/southeasterly by the Sherborn Town Forest in three courses measuring 373.84 feet, 99.43 feet and 188.30 feet to a point;

running

Thence/southerly by the Sherborn Town Forest in part and the Shell Oil Company Easement in part in four courses measuring 61.91 feet, 74.46 feet, 167.90 feet and 208.27 feet to the point of the beginning.

Said Lot 3B containing 6.92 acres more or less.

A portion of Lot 3B is subject to an easement to the Shell Oil Company as shown on such plan.

This conveyance is made upon the express condition that the land shall forever be kept in its natural state, it being the intention of the grantors hereby to convey fee simple subject to a condition subsequent, the breach of which may cause the forfeiture of the fee, and to retain a right of entry for condition broken.

For the grantor's title see deed from Richard Saltonstall of Sherborn and Dudley H. Willis and Sally S. Willis, both of Sherborn, and Gilbert H. Mudge, Jr. and Barbara J. Mudge, both of Sherborn, to the grantors dated May 11, 1979 and recorded at Middlesex South Registry of Deeds in Book 13688, Page 654.

WITNESS our hands and seals this 3rd day of December 1981

Dudley H. Willis  
Dudley H. Willis (as grantor)

Sally S. Willis  
Sally S. Willis (as grantor)

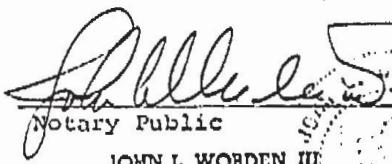
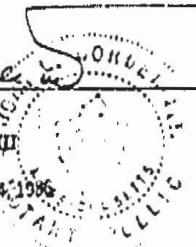
Commonwealth of Massachusetts

Suffolk, ss.

Dec. 3 1981

Then personally appeared the above named DUDLEY H. WILLIS, and acknowledged the foregoing instrument to be his free act and deed, before me

-2-

  
JOHN L. WORDEN III  
Notary Public  
My Commission Expires Nov. 14, 1986  


WITNESS our hands and seals this 3rd day of December, 1981

Richard Saltonstall  
Richard Saltonstall (as grantor)

Commonwealth of Massachusetts

Suffolk, ss.

December 2 1981

Then personally appeared the above named RICHARD SALTONSTALL, and acknowledged the foregoing instrument to be his free act and deed, before me

Dudley H. Willis  
Notary Public





Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Northeast Regional Office • 150 Presidential Way Woburn, MA 01801 • 978-694-3200

Maura T. Healey  
Governor

Kimberley Driscoll  
Lieutenant Governor

Rebecca L. Tepper  
Secretary

Bonnie Heiple  
Commissioner

August 14, 2023

Robert Murchison  
Fenix Partners Farm Road, LLC  
177 Lake Street  
Sherborn, MA 01770

**RE: Sherborn**  
Request for Determination of Applicability  
310 CMR 22.02(1)  
55-65 Farm Road, Sherborn  
**Preliminary Approval of Request**

Dear Mr. Murchison:

Please find attached the following information:

Preliminary approval for a determination pursuant to 310 CMR 22.02(1) that proposed drinking water systems to be located at 55-65 Farm Road in Sherborn should not be regulated as a Public Water System subject to the Massachusetts Drinking Water Regulations, 310 CMR 22.00.

If you have any questions regarding this letter, please contact James Persky at (781) 223-4827.

Sincerely,

James H. Persky  
Environmental Analyst  
Drinking Water Program

Kristin L. Divris  
Deputy Regional Director  
Bureau of Water Resources

cc: DWP/Boston Office (no attachment)  
Stephen W. Smith, GeoHydroCycle, Inc., 5 Madison Avenue, Newton, MA 02460  
Sherborn Board of Health, 19 Washington Street, Sherborn, MA 01770

File Name: MassDEP BWR SharePoint\DWPArchive\NERO\Sherborn-FarmRd-PWS Det-PrelimApproval-2023-08-14

This information is available in alternate format. Please contact Melixza Esenye at 617-626-1282.  
TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

Printed on Recycled Paper

On October 1, 2022, Fenix Partners Farm Road, LLC (“Fenix”), of the above-listed address submitted to the Massachusetts Department of Environmental Protection (“MassDEP”) a request for a determination pursuant to 310 CMR 22.02(1) that one or more proposed drinking water systems to be located at 55-65 Farm Road in Sherborn, Massachusetts, (the “Drinking Water System”) should not be regulated as a Public Water System (“PWS”) subject to the Massachusetts Drinking Water Regulations, 310 CMR 22.00 (“the Regulations”). Additional documentation was submitted to MassDEP on April 24, 2023 and May 26, 2023. MassDEP issues this letter in response to your request.

You have made an Information Submittal<sup>1</sup> to MassDEP, as more particularly described below in Section I. Based upon your Information Submittal, MassDEP has evaluated your request.

For the reasons set forth in Section II, MassDEP has made a preliminary determination that the Drinking Water Systems should be exempt from regulation as a PWS, taking into account the risk to public health.

**I. INFORMATION SUBMITTED FOR REVIEW.** You submitted the following information and supporting documentation<sup>2</sup> to MassDEP for review in support of your request.

- A project plan
  - “Final Seven Private Well Groups Submittal,” dated May 25, 2023. This revision of an earlier plan moved two wells farther upgradient from septic-disposal systems and one well farther from a stormwater basin
- A listing of the units, with number of bedrooms, that will be served by each Drinking Water System
  - “Farm Road Homes PWS Applicability Review Request Information Figures and Data Tables,” dated October 1, 2022
- Ownership or control evidence/Source Protection Measures
  - “Farm Road Homes Draft Language Well Ownership and Control,” dated October 1, 2022
  - Conservation Restriction on the lot identified as Lot 3B as is Recorded at the Middlesex South Registry of Deeds at Book 144, Page 441
- Certification
  - “Fenix Partners Farm Road PWS Applicability Review Request Certification,” dated October 1, 2022

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<sup>1</sup> Capitalized terms used in this letter are defined in MassDEP’s “Key to Terms,” a copy of which is attached.

<sup>2</sup> MassDEP has provided you with a copy of its “Minimum Recommendation Information List,” a copy of which is attached, and the Key to Terms to assist you in providing information needed for review of your request.

## II. CONCLUSION.

MassDEP has made a **Preliminary Determination** that the Drinking Water Systems for the proposed development at 55-65 Farm Road in Sherborn should not be regulated as a PWS, taking into account the risk to public health. This determination is preliminary because finalized deeds and documentation indicating the ownership and control of each Drinking Water System and its associated Zone I equivalent area are not yet available.

This Preliminary Determination has been made in reliance upon and subject to the truth, accuracy and completeness of the information contained in the Information Submittal, except to the extent that the plans and documents listed in Section I. above are modified as a result of the local planning board or other local approving authority's approval process. The Preliminary Determination is based upon the condition that there will be no material changes to the plans and documents listed in Section I. above when made final.

Each Drinking Water System may be subject to other State or local regulation, including without limitation Title 5 (State septic-disposal regulations, 310 CMR 15.000).

MassDEP, upon written notice to the Applicant or its successor, reserves the right to withdraw the Preliminary Determination that each Drinking Water System (or a subset of such Drinking Water Systems) is not required to be regulated as a PWS, in the event that:

- A material fact upon which the Preliminary Determination is based is not as described in the Information Submittal;
- A Source Protection Masure which the Applicant has identified in the Informational Submittal and the Department has determined is necessary has not been properly maintained and operated, or is otherwise inadequate; or
- MassDEP finds that continuing to exempt each Drinking Water System (or a subset of the Drinking Water Systems) from regulation as a PWS would pose a risk to public health.

The Preliminary Determination shall be valid for one year from its date of issuance. It may be extended for a period of one year upon advance written notice to MassDEP, that shall be submitted no less than thirty (30) days prior to its expiration. It shall only be extended beyond two years for satisfactory cause explained in an advance written request submitted to MassDEP no less than thirty (30) days prior to the expiration of the Preliminary Determination (satisfactory cause, for example, being an unavoidable delay in a planning board or other local approval authority issuance of a final decision or in the event of an appeal of such a decision). Any such extension shall be in writing and shall provide a date certain for its expiration.

Prior to the expiration of the Preliminary Determination, the Applicant must submit to MassDEP a request for a final Determination with the final, approved, executed and/or filed version of the plans and documents listed in Section I. above, with a letter explaining any substantive changes

to such plans and documents, including any appropriate supporting documentation, which shall be subject to further MassDEP review for a final Determination. Depending on the nature of such substantive changes, MassDEP could withdraw its Preliminary Determination.

The Preliminary Determination shall remain valid pending MassDEP's review of a timely submitted request for a final Determination and issuance of such final Determination approving or denying the Applicant's request. Any action taken under or reliant upon the Preliminary Determination shall be solely at the Applicant's risk and expense.