

Mountain Reach Development
NOTICE OF DECISION – AMENDMENT TO DECISION OF DECEMBER 27, 2006
Goshen Planning Board
January 8, 2008

INTRODUCTION

This document is an amendment to the December 27, 2006 Notice of Decision related to the application by Mountain Reach Development Group, LLC, to construct a 26 unit open space condominium development with associated on-site and off-site improvements. This document includes new provisions, as well as modifications to requirements presented in the December 27, 2006 decision. It will also serve to document how the applicant has met prior Conditions Precedent. All prior conditions of the December 27, 2006 decision that are not specifically modified herein remain in effect.

This document follows the format of the original decision and is thus divided into five sections.

- I. **Finding of Fact:** consists of a list of all documents and other relevant findings considered part of the application package.
- II. **Reasoning of Decision:** serves to explain how the Planning Board determined the application met or failed to meet the standards in the Town of Goshen ordinances and regulations. All referenced documents are considered part of the Record of Decision and are incorporated by reference in their entirety.
- III. **Motion:** consists of a motion, which will be made by the person reading this document at a Public Hearing.
- IV. **Conditions Precedent:** consists of a list of conditions that must be met by the applicant before any approval is final. No site work may be initiated until the Goshen Planning Board determines that all conditions in the **Conditions Precedent** section have been met.
- V. **Conditions Subsequent:** consists of a list of conditions on how the project will be implemented.

The terminology used in this document follows that defined in the December 27, 2006 Notice of Decision and thus, for brevity, is not repeated here.

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I. FINDING OF FACT

Goshen Planning Board voting members present for the reading of this document related to the Mountain Reach application are: Chairperson John Wirkkala, Vice-Chairperson Allen Howe, Richard Moen, and Jonathan Purick. Other Board members who participated in the hearing process were alternate members John Scranton and Carl Wideberg and Select Board Representative James Carrick.

The Board convened a status meeting on May 1, 2007 on the Mountain Reach development proposal. This was followed by a Public Hearing that was convened on the following dates in 2007: June 5, June 26, July 10, July 17, July 31, August 14, August 28, September 11, September 25, October 2, October 31, November 6, November 27, December 4, and January 8, 2008.

The following individuals provided oral testimony for Mountain Reach Development Group LLC (MRDG) during the hearing process:

- Richard Reeves, and Mark Loehr, MRDG Members;
- Richard Uchida and Carley McWhirk of Crisp, Barrett, Hebert and Uchida, Legal counsel to MRDG;
- Roger Wells of Wells Appel Land Strategies, Planning and Landscape Architects for MRDG;
- David Eckman of Eckman Engineering LLC, Engineering and Survey Services for MRDG;

SUBMITTAL ITEMS

If an item included in Table 1 of the December 27, 2006 Notice of Decision no longer represents the current state of the development proposal and there is still a pertinent outstanding issue before the board, then the relevant document is listed in Table 1 below. Thus, by default, any other items included in Table 1 of the December 27, 2006 Notice of Decision that are not listed below either pertain to an issue previously resolved or represent a document that is obsolete.

The January 8, 2008 Revised Site Plan Approval Package represents the development plans as currently proposed. Table 1 below also lists other submissions related to this amendment to the December 27, 2006 decision. Intermediate or draft documents or documents whose content have been incorporated into other final products included in Table 1 have been omitted. The UVLSRPC consultant shall review final submissions to verify they comply with Planning Board requirements through the October 2, 2007 hearing before mylars may be recorded.

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Table 1. Findings of Fact, Mountain Reach Development.

Item No.	Submission	Date
1	Alteration of Terrain Permit Application for Mountain Reach, revised (submitted to ZBA 8/03/2007)	4/11/2007
2	Letter dated April 12, 2007 from Douglas R. King, Assistant District Engineer, New Hampshire Department of Transportation, in which the DOT considered the proposed intersection mitigation adequate.	4/12/2007
3	Proposed Maintenance and Upgrade of the Perrino Fire Pond, Wetland Application and Design Package	4/26/2007
4	Proposed Dry Hydrant Installation into an Existing Recreational Pond, Wetland Application and Design Package	4/26/2007
5	Letter from T. Andre Bover, Municipal Resources, Inc. including a review of the applicant's bonding proposal	7/3/2007
6	Mountain Reach Update Report (re Thinning and Limbing)	7/10/2007
7	Letter from David Eckman to Peter Dzewaltowski, UVLSRPC, responding to the peer review of Quantity and Cost Estimate (attachments include David Eckman's cost estimates for bonding)	7/16/2007
8	Letter from T. Andre Bover, Municipal Resources, Inc. responding to David Eckman's letter of 7/16/2007 regarding Peer Review of Quantity and Cost Estimate	7/27/2007
9	Email from DRED to Mark Loehr confirming boundary	8/14/2007
10	Revised Open Space Conservation Easement Plan Sheets CE1, CE2 dated 9/20/2007 (draft mylar)	9/25/2007
11	Open Space Conservation Easement Document	10/3/2007
12	Site Plan Approval Package, Revised January 8, 2008	1/8/2008
13	Declaration of Covenants and Restrictions for the Benefit of the Town of Goshen	1/8/2008
14	Declaration of Condominium	1/8/2008
15	Letter from Diana Morgan, Drinking Water and Groundwater Bureau, DES, to Shelley Bobowski, Geosense, dated January 7, 2008.	1/8/2008

Other Findings of Fact

The applicant has modified the proposal from a 26 unit to a 24 unit development, as reflected in the Site Plan Approval Package dated January 8, 2008. Previous plans would have replaced the existing house with a 3-unit building (Building F). The applicant has proposed to retain the existing house, which has its own well, and thus eliminate the previously proposed building at that location which would have contained 3 condominium units.

A letter from Diana Morgan, Drinking Water and Groundwater Bureau, DES, to Shelley Bobowski, Geosense, dated January 7, 2008 states that DES conditionally approves four new wells for the Mountain Reach development (NHDES Tracking No. 998031).

II. REASONING OF DECISION

No changes, including retention of the existing house and associated reduction in the total number of units from 26 to 24, have been made to the development plans that alter the Planning Board's original determinations as presented in the December 27, 2006 Notice of Decision.

Based on the content of an email from Torene Tango-Lowy, DRED Division of Parks and Recreation, dated May 14, 2007 regarding the in-common boundary between the Mountain Reach Development and the Mount Sunapee State Park, the necessary conclusion is that the existing chain linked fence proximate to the state park ski lift terminus is owned by the Mountain Reach Development.

III. MOTION

I, Allen Howe, make a motion that the Board approve the Mountain Reach development proposal as modified by the conditions presented in this document. All other requirements of the December 27, 2006 Notice of Decision will remain in effect. Seconded by Rich Moen.

IV. CONDITIONS PRECEDENT

The following presents each of the original 19 Conditions Precedent, followed by an explanation in bold face type explaining how the requirement has been met by the applicant or amended by the Planning Board.

CONDITIONS REQUIRING A PLANNING BOARD HEARING

1. The applicant shall present for Board approval a Town Driveway Permit for a major entrance consistent with Section 4B of the Town Driveway Regulations.

Mark Beaudry, Goshen Road Agent, issued a Driveway Permit # 07-06-1 on 6/4/07, with conditions noted on the permit form.

2. The applicant shall present for Board approval a written endorsement by the Goshen Fire Chief supporting the Fire Protection Plan. The Fire Chief may request the State Fire Marshal to review the proposal and provide suggestions for any advisable revisions. The Board reserves the right to require plan amendments according to the Fire Marshal's comments.

Ricky Shepard, Goshen Fire Chief, submitted a letter dated June 4, 2007 to Chairman Wirkkala accepting the development plans. The acceptance is conditional based on a requirement that the Goshen Fire Department officers are allowed to periodically inspect the progress of installation of the fire protection devices and to inspect devices once installed. The Mountain Reach Homeowner's Association must also correct in a timely manner and to the satisfaction of the Goshen Fire Department any future fire protection problems or issues identified by the Goshen Fire Department on the development.

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3. The applicant shall present for Board approval plans for the three existing “sheds” on the property, in accordance with Site Plan Review Regulations Section VII.C.3.

This condition is addressed in the Revised Site Plan Approval Package on Plan Sheet L3B.

4. The applicant shall present to the Board a proposed conservation easement deed to the Town, consistent with Section VII.F of the Ordinance, which is consistent with the submitted Open Space Plan (Table 1, Item No. 50, plan sheets L-6 and L-7, 9/22/06), which provides for public nonmotorized access and makes provisions for a trail corridor, as set forth in the "reasoning" section above, and which provides, at the Town's option, for its administration and enforcement to be delegated to a third party. The easement shall be reviewed for consistency with this Notice of Decision by the Town's attorney, at the applicant's expense, prior to final plan approval.

All Planning Board concerns have been discussed and the final document has been reviewed by the Town’s Attorney and the Planning Board. All legal issues and policy concerns have been resolved to the satisfaction of the Planning Board. Plan Sheets CE-1 and CE-2, as well as L-6 and L-7, present the open space configuration.

5. The applicant shall present to the Board condominium documents, including the Declaration, By-Laws, and Rules and Regulations, consistent with all of the provisions of this Notice of Decision, as set forth in the "reasoning" section above, to include provisions for inspection and maintenance of all common infrastructure including roads, drainage and fire protection infrastructure. The above condominium documents shall be reviewed by the Town's attorney for consistency with this Notice of Decision and the Goshen Zoning Ordinance and applicable site plan and subdivision regulations, at the applicant's expense.

All Planning Board concerns have been discussed and the final documents, including *Declaration of Covenants for the Benefit of the Town of Goshen*, have been reviewed by the Town’s Attorney and the Planning Board. All legal issues and policy concerns have been resolved to the satisfaction of the Planning Board.

6. The applicant shall present to the Board for approval a review by the UVLSRPC consultant of final construction plans for the development for consistency of plans with this Notice of Decision. Material differences or inconsistencies between the final construction plans and the final Notice of Decision will require additional Board consideration. Also, material differences or inconsistencies between the submissions of 09/22/2006 and earlier submissions will require future Board approval.

Peter Dzewaltowski, UVLSRPC, verbally on 6/5/07 presented to the Planning Board his professional opinion that final construction plans for the development were consistent with the December 27, 2006 Notice of Decision. While thinning and limbing depicted on 9/22/2006 plans did differ from that shown on earlier submissions, the Planning Board successfully addressed this as part of the review and approval process for the Conservation Easement deed document. The final provisions for thinning/limbing were accepted by the Planning Board on July 31,

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2007 and are reflected in the Declaration of Covenants and Restrictions for the Benefit of the Town of Goshen, (Table 1, Item 13), the Conservation Easement Deed (Table 1, Item 11), and also in new conditions 30b and 30c listed below.

7. The applicant shall present to the Board for approval an estimated timetable and cost estimate for construction and completion of infrastructure, landscaping, and improvements to Old Province Road; and an estimated timetable for construction and completion of buildings. The sufficiency of the project's bonding proposal shall be reviewed, at the applicant's expense, by a Professional Engineer employed by the Town and licensed in the State of New Hampshire.

David Eckman's submission regarding Engineer's Quantity and Cost Estimate for Bonding On-Site, Old Province Road Reconstruction, and Old Province/Brook Road Intersection dated May 1, 2007 presented cost estimates for bonding purposes. The adequacy of the cost estimates was reviewed by T. Andre Bover, Municipal Resources, Inc. and estimates were subsequently updated to address concerns. T. Andre Bover reviewed the updated figures and determined that the current estimate of \$1,565,005.49 was reasonable and may be used as a bond amount.

The Phasing Plan is included as Plan Sheets P-1 and P-2 dated January 8, 2008 and addresses the schedule for the development and off site improvements.

8. The applicant shall present to the Board for approval a proposal for signage that identifies the deeded open space boundary.

Open Space Conservation Easement Plan sheets CE-1 and CE-2 dated 9/20/2007, Table 1, Item 10, depict and describe the signage to delineate the open space boundary.

CONDITIONS REQUIRING ADMINISTRATIVE ACTION ONLY (NO BOARD HEARING WILL BE REQUIRED)

9. The applicant shall present to the Board an approved State of NH Well and Community Water Supply Plan.

A letter from Diana Morgan, Drinking Water and Groundwater Bureau, DES, to Shelley Bobowski, Geosense, dated January 7, 2008 states that DES conditionally approves four new wells for the Mountain Reach development (NHDES Tracking No. 998031). The DES conditions are:

- **The total Permitted Production Volume (PPV) for all the wells shall not exceed 23,688 gallons in any 24-hour period. The PPVs for each of the wells shall be as listed in the table below (Note: *the table has not been reproduced here*).**
- **Treatment for uranium shall be required, provided that the system cannot successfully blend the water withdrawn from the wells to achieve a uranium concentration below the drinking water standard.**
- **Uranium treatment or a flow mix blend must be approved and implemented prior to serving water to customers.**

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- **Due to the extremely low yield of the water supply wells (indicative of the low capacity of the fractured bedrock aquifer in the area), the degree of drawdown observed during the pumping test, and the slow water level recovery after pumping ceased; the New Hampshire Department of Environmental Services (NHDES) is concerned that the tested wells may not provide a sustainable, long-term water supply to the system for any demand other than domestic use. As such, NHDES approves these sources under the condition that installing an in-ground irrigation system(s) on the property is prohibited through appropriate language in the common land deed for the planned condominium development. A copy of that document must be submitted to NHDES within 180 days of the date of this letter.**
10. The applicant shall present to the Board an approved Site Specific Permit from DES.
The applicant presented to the Board a letter from DES dated June 13, 2007, stating approval with conditions of the application for a permit. Permit number WPS-7823A was issued by DES.
 11. The applicant shall present to the Board an approved State Subdivision Permit from DES.
This is still pending. The mylar won't be recorded at the Sullivan County Registry of Deeds nor will building permits for this development be issued until this condition is met. Since this condition requires administrative action only, the applicant need only provide proof this condition has been satisfied and no subsequent public hearing will be required on the matter.
 12. The applicant shall present to the Board the Goshen Zoning Board of Adjustment final approval for the already conditionally-approved special exception to place buildings on slopes between 15-25 percent.
The board received a letter dated July 10, 2007 from Philip Stentz, Chairman, Goshen Zoning Board of Adjustment (ZBA), that all updated materials pertinent to their requests have been received and that Mountain Reach has met all ZBA requirements.
 13. The applicant shall present to the Board condominium documents approved by the State Attorney General.
The Planning Board voted on July 10, 2007 to delay fulfillment of this condition until after the mylar is signed. The mylar won't be recorded at the Sullivan County Registry of Deeds nor will building permits for this development be issued until the above condition is met. For organizational purposes, this condition is now listed as Condition Subsequent 40 in this document.
 14. The applicant shall present to the Board an approval by the Goshen Select Board and Road Agent of proposed improvements to Old Province Road.

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A letter dated September 18, 2006 from the Goshen Select Board outlines the agreement regarding the above improvements to Old Province Road. This letter was item 49 in Table 1 of the original decision document.

15. The applicant shall present to the Board approval by the NH Department of Transportation District 2 for the alteration of the intersection of Old Province Road and Brook Road.

The applicant provided the board with a letter dated April 12, 2007 from Douglas R. King, Assistant District Engineer, New Hampshire Department of Transportation, in which the DOT considered the proposed intersection mitigation adequate.

16. The applicant shall present to the Board a State Driveway Permit for the improvements to the Old Province Road and Brook Road intersection.

The Planning Board voted on July 10, 2007 to delay fulfillment of this condition until after the mylar is signed. In addition, the condition was revised to reflect that a State of New Hampshire Department of Transportation trench permit, not a driveway permit, is the appropriate requirement. For organizational purposes, this condition is now listed as Condition Subsequent 30a in this document.

17. The applicant shall present to the Board two suitable mylars, one for recording at the registry of deeds and one for the Town of Goshen.

The Planning Board voted on August 14, 2007 to waive the Subdivision Regulation 4.13 that required posting of the security bond prior to plan approval, subject to the condition that the mylar won't be recorded at the Sullivan County Registry of Deeds until the security is posted. Upon signing the mylar, the Town will retain the two original mylars and shall release a paper copy of the signed mylar to the applicant for the purpose of registering the condominium with the State of New Hampshire Attorney General's Office.

18. The applicant shall present to the Board evidence of acceptable bonding or other security for completion of on-site and off-site roads, drainage, and utility infrastructure, as well as for reclamation and landscaping of all disturbed areas prior to the issuance of a building permit. The Town's attorney will review the security instrument for legal considerations, at the applicant's expense.

The Planning Board voted on August 14, 2007 to waive the Subdivision Regulation 4.13 that required posting of the security bond prior to plan approval, subject to the condition that the mylar won't be recorded at the Sullivan County Registry of Deeds until the security instrument has been reviewed for legal considerations and adequate security has been posted.

19. The applicant shall present to the Board a minimum of 5 blue/blackline copies of the revised plat, including all checklist corrections and any corrections as noted during this hearing.

Two mylars and the above copies shall be presented to the Planning Board once the applicant has received approval of a State of NH Well and Community Water

Supply Plan from DES and a State Subdivision Permit from DES and the associated permit numbers are inserted on the plans and mylars, where appropriate. The UVLSRPC consultant shall review final submissions to verify they comply with Planning Board requirements through the October 2, 2007 hearing before the mylar may be recorded at the Sullivan County Registry of Deeds. As noted above, the mylar won't be recorded until adequate security is posted.

V. CONDITIONS SUBSEQUENT

The following section includes only Conditions Subsequent that have been amended or added by the Planning Board since the December 27, 2006 Notice of Decision. The single amended provision is followed by an explanation of the amendment in bold faced type. All other Conditions Subsequent presented in the December 27, 2006 Notice of Decision remain in effect.

CONSTRUCTION

21. With the exception of off-site improvements, on-site ground disturbance is prohibited that cannot be graded and seeded by September 15 of any construction year. All site work must be completed by September 15, 2010.

On July 31, 2007 the Planning Board voted to change the original completion date of September 15, 2010 to September 15, 2011.

- 30a. The applicant shall present to the Board a State of New Hampshire Department of Transportation trench permit for the improvements to the Old Province Road and Brook Road intersection.
- 30b. The applicant will pay the cost of an independent licensed landscape architect to a) review the thinning and limbing plan for each of the 24 viewsheds, b) monitor the initial thinning and limbing for each viewshed, and c) review the as-built plan for each viewshed.
- 30c. The Applicant's as-built plans for thinning and limbing must be approved by an independent licensed landscape architect prior to the issuance of the last certificate of occupancy for each building.
- 30d. By September 2010 the existing house (Building F) will be modified to conform to condominium association standards related to exterior elements.
- 30e. Following specifications presented in Section XI.N of the Goshen Site Plan Review Regulations and prior to commencement of construction, the applicant shall measure and present to the Planning Board and Select Board both daytime and nighttime baseline noise levels certified by a New Hampshire licensed professional engineer. In addition, to demonstrate compliance with construction phase noise level standards, as presented in Section XI.N.4 of the Goshen Site Plan Review Regulations, the applicant shall measure and present to the Select Board noise levels certified by a New Hampshire licensed professional engineer throughout the duration of the project.

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OPERATIONS

Infrastructure Maintenance

No additions or changes were made to this section.

Open Space Management

- 38a. The Mountain Reach Condominium Association will pay the cost of an independent licensed landscape architect to monitor the maintenance cutting for each of the 24 viewsheds in accordance with the as-built plans.

Other Conditions

40. The applicant shall present to the Board condominium documents approved by the State Attorney General. The mylar won't be recorded at the Sullivan County Registry of Deeds nor will building permits for this development be issued until the above condition is met.
41. The Mountain Reach Development group must apply for a permanent, on-site washroom for maintenance personnel after final approval is granted for this development. This washroom must be operational prior to issuance of the occupancy permit for the last unit in the development.
42. Landscaping around each unit will be completed within 9 months of completion of such unit and landscaping not associated with a particular unit will be completed within 9 months of the completion of the associated phase. In no case shall any landscaping remain uncompleted after September 15, 2011.