

## **DECISION OF THE ZONING BOARD OF APPEALS**

### **Comprehensive Permit**

#### **Cloverleaf Truro Rental Housing**

**Applicant:** Community Housing Resource, Inc.  
**Owner:** Town of Truro  
**Locus:** 22 Highland Road  
Assessor's Map 36, Parcel 238  
**Sitting:** Arthur F. Hultin, Jr., Chair; Fred Todd, Vice Chair; John Dundas; John Thornley; Chris Lucy, Heidi Townsend*[alternate, note voting]*

#### **Public Hearing Dates:**

November 21, 2019; December 5, 2019; December 12, 2019; December 19, 2019; January 16, 2020 (procedural); February 24, 2020 (procedural); March 12, 2020; April 2, 2020 (procedural); May 28, 2020 (procedural); June 25, 2020; July 9, 2020 (adjourned early due to technical difficulties); July 16, 2020; July 30, 2020; August 20, 2020; September 3, 2020 (procedural); September 10, 2020; September 24, 2020; October 1, 2020; October 8, 2020; October 22, 2020; November 5, 2020; November 12, 2020 (adjourned early due to GoToMeeting Outage); December 3, 2020; December 17, 2020; January 7, 2021; January 14, 2021.

On November 6, 2019, Community Housing Resources, Inc. (~~Community Housing-CHR~~ or Applicant) submitted an application for comprehensive permit for a project known as "Cloverleaf," proposed to be constructed on Town-owned land off Highland Road on the east side of Route 6 ("Project"). Public hearing opened on November 21, 2019, and was continued to the dates above. Pursuant to extensions granted by the Applicant, and further continuances necessitated by the COVID-19 emergency declared by the Governor on March 13, 2020, the hearing closed on DATE. The Board deliberated on DATES. Pursuant to G.L. c. 40B, ss. 20-23 and regulations thereunder, the Zoning Board of Appeals voted to GRANT/DENY the application for a comprehensive permit for Cloverleaf, subject to certain conditions.

#### **I. History of Project**

The 3.91-acre project site is a parcel conveyed to the Town of Truro by the Massachusetts Department of Transportation in 2017 for the purpose of constructing a mixed-income housing development, with at least 25% of units affordable to persons or households earning 80% of the

Area Median Income.<sup>1</sup> The parcel was a portion of the State Highway layout and was made available to the Town through the Commonwealth's "Open for Business" initiative. Town Meeting approved the acquisition of the parcel for affordable housing purposes on April 26, 2016, ATM Article 20. The Release Deed was accepted by the Select Board on September 19, 2017.

Over the next six months, the Truro Housing Authority, working with Town staff and officials through a public process, developed a housing program for the property. Rental housing was selected to meet the Town's most acute housing needs. Density, unit size/mix, and levels of affordability were discussed. Following this process, the Board of Selectmen approved a Housing Program for 30 to 40 units, a density enabled by extension of the water line down Highland Road to the project site.<sup>2</sup> In 2019 the Town was awarded a MassWorks grant of \$2.1 million to fund the costs of the water line extension. In addition, Truro was designated a "Housing Choice Community" and was awarded a "Planning for Housing Production" technical assistance grant of \$75,000 for engineering costs relating to extension of the water line.<sup>3</sup>

The Town issued a Request for Proposals in August of 2018 for the development and management of an affordable and mixed-income rental development of 30 to 40 units, envisioned to be permitted under G.L.c. 40B. Among other design and construction guidelines indicated, the RFP included a suggestions of buildings clustered into small but multi-unit structures, and "a larger structure housing multiple smaller units with some common space, creating an independent living arrangement that would be appealing to senior citizens."

CHR submitted a proposal consistent with RFP criteria and was selected as the developer through the RFP process in January 2019. A Land Development Option Agreement was executed by the Select Board and CHR in September 2019. This Agreement provides, at CHR's option, and subject to the developer's obtaining all necessary permits, for CHR and the Town to enter into a 99-year ground lease under which the Applicant will construct and operate the housing development on the parcel. The Town will enter into such lease through the Select Board, which will negotiate certain terms and conditions governing construction and operation of the development.

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<sup>1</sup> The parcel is described in a Release Deed recorded with the Barnstable County Registry of Deeds at Book 30796 Page 289, and is shown as "Parcel 1" on a plan entitled "Plan of Land in Truro Massachusetts" dated September 6, 2019, prepared by VHB, Inc., and recorded with the Barnstable County Registry of Deeds at Plan Book 672, Page 31.

<sup>2</sup> The Town of Provincetown approved the Cloverleaf water line extension in April 2019.

<sup>3</sup> Prior to construction of the Project, the Town of Truro will extend the water line to 22 Highland Road and install the water line within the project site to serve the Project. Certain conditions in this permit are applicable prior to site disturbance (for example, the requirement of a Turtle Protection Plan approved in writing by the state's Natural Heritage and Endangered Species Program). To the extent applicable, the Town's work within the Project site must comply with the conditions in this Permit.

### Project Site and Components

The pPProject parcel lies in a Residential Zoning District, abutting Route 6 to the west, the National Seashore and a single-family property to the east; Highland Road to the south, and a single family property to the north. It lies within an area mapped by the Natural Heritage and Endangered Species Program as Priority Habitat for Eastern Box Turtle. The parcel does not include or border on any wetlands under the Wetlands Protection Act or Truro Wetlands Bylaw.

The pPProject site is currently wooded and vacant. The front area of the parcel is fairly steeply sloped, from an elevation of 24' at Highland Road to an elevation of 63' within the parcel. The parcel slopes down to an elevation of 32' at the rear of the parcel. Site work will include considerable clearing, earth removal, and regrading in order to construct a safe roadway, and to create a level area for the project buildings and leaching field of the project's Title 5 system.<sup>4</sup>All traffic will enter and exit the project on a single roadway to Highland Road. A gated emergency access road (also to be used for construction) will provide access to Route 6 from the rear area of the parcel.

The pPProject in its final design consists of twelve townhouse-style duplexes and a fifteen-unit apartment building, for a total of thirty-nine rental units.<sup>5</sup>Ten of the duplexes and the three-story apartment building are sited around an oval loop roadway, within which is a landscaped common area; an additional two duplexes are located at the rear of the parcel behind the apartment building. The duplex buildings contain a mix of one-, two-, three- units. The architectural style is described as "variations on Cape Cod vernacular" and the exterior to be cedar shingles or clapboard.

The apartment building contains mostly one-bedroom units and an elevator, allowing for "single-level" living. Community space and an office are also located within the building. Design changes to the roof of the apartment building and townhouse buildings, discussed during public hearing, will allow for the installation of solar panels.

The project is proposed under the Low-Income Housing Tax Credit Program. As approved in the Project Eligibility letter issued by the Department of Housing and Community Development (DHCD), and as proposed in the application, 20 of the units will be affordable to households at no more than 60% of Area Median Income (AMI); and an additional 6 units will be affordable at no more than 80% of the AMI. An additional 6 units will be restricted to up to 110% of AMI, and 7 units will be market rate. The substantial proportion of affordable units in the project, as well as the deeper affordability of many, provides meaningful progress towards addressing the Town's rental housing needs. The considerable relief requested from the Town's Zoning Bylaw and other regulations is premised on this contribution.

<sup>4</sup> As a condition of approval, the soils removed will be contributed to the Town, to be used for beach nourishment.

<sup>5</sup> As originally proposed, the project contained forty units and included a seven-unit building near the front of the parcel. This building was eliminated from the design because its location did not permit sufficient and safe access to the project by emergency vehicles.

**Commented [BHC1]:** Project Eligibility letter approved plan for 40 units: 21 at 60%, 6 at 80%, , 6 at 110%, and 7 at market rate. See also application (same).

## **II. Record before the Zoning Board of Appeals**

The materials identified in Appendix A comprise the record before the Board.

## **III. Findings of the Board**

### **A. Findings on "Project Eligibility"**

Based on the materials submitted by the Applicant, the Board makes the following findings with respect to the requirements of 760 CMR 56.04(1):

- (a) The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization

The Applicant to the Board is Community Housing Resources, Inc. As interpreted by DHCD, it is sufficient under G.L.c. 40B for an applicant to state an intention to form a Limited Dividend Organization at a later time in order to satisfy this requirement. The Applicant has stated that a qualifying single-purpose ownership entity, tentatively named "CHR Cloverleaf, LLC" will be formed and controlled by Edward Malone; this entity must limit profit and return on investment as required by the subsidizing agency and otherwise meet the general eligibility standards of the Low Income Housing Tax Credit Program.

The Board finds that this satisfies the requirement of 760 CMR 56.04(1)(a).

- (b) The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

The Project Eligibility Letter issued by DHCD on November 19, 2019, states that the project has been approved under the Low Income Housing Tax Credit (LIHTC) program. Under DHCD regulations, this approval letter is sufficient to establish "fundability" for purposes of 760 CMR 56.04(1)(b); although as noted by the Project Eligibility Letter, it is not a guarantee that LIHTC funds will be allocated to this Project.

The Board finds that this satisfies the requirement of 760 CMR 56.04(1)(b).

- (c) The Applicant shall control the site.

The Applicant entered into a Land Development Option Agreement with the Town of Truro, through its Select Board, on September 24, 2019. This Agreement has been extended by the parties through December 31, 2021. Under this Agreement, the Applicant has an option to develop and manage the ~~p~~Project, pursuant to 99-year ground lease to be executed by the Town, which will retain ownership of the parcel.

The Board finds that the Applicant controls the site for purposes of 760 CMR 56.04(1)(c).

## **B. Findings on the need for affordable housing**

1. The Board finds that there is a critical, unmet need for affordable housing in the Town of Truro.
2. The Board finds that the need for year-round, affordable rental units is particularly acute.
3. The Board finds that the production of affordable rental housing was identified as a priority in the Town's most recent Housing Production Plan (HPP).
4. The Board finds that the Town of Truro has not achieved the 10% threshold identified in G.L. c. 40B, ss. 20, or any other "safe harbor" under the statute and DHCD regulations. The Town currently has 25 housing units on the Department of Housing and Community Development's Subsidized Housing Inventory (SHI), or 2.3%.

## **IV Waivers**

Massachusetts General Laws c. 40B, §§20-23 empowers local Boards of Appeals to grant waivers from local rules and regulations, where the waivers are "consistent with local needs" under the statute. The Board understands that reasonable waivers from local regulations should be granted if, but for the waiver, the development of the housing project would be "uneconomic," as that term is used in G. L. c. 40B, §§ 20-23.

The Applicant included its November 6, 2019 application to the Board a list of requested waivers. This List was updated during the hearing process.

Under existing law and regulation, the Applicant has an affirmative obligation to demonstrate the need for the requested waivers to avoid the proposed project becoming "uneconomic." Although the Applicant has not provided documentation to demonstrate that the pProject would be rendered uneconomic *but for* the specifically requested waivers and exceptions, the Board has reviewed the Applicant's waiver requests and has granted those that are consistent with protection of the general health, safety and welfare. The Board finds, in the absence of any substantiation to the contrary, that the waivers not granted do not either alone, or in the aggregate, render the pProject uneconomic.

In the event that the Applicant or any Town official, consultant or other agent determines that the final design of the pProject necessitates further waivers, the Applicant shall submit a written request for such waiver(s) to the Board. The Board may grant or deny such additional waivers in accordance with applicable rules and regulations and the judgment of the Board.

The Board's decision as to each of the waivers and exemptions requested is set forth in **Appendix B, Decision on Waivers.** The only waivers granted are those expressly approved in Appendix B. If a waiver is not expressly approved in Appendix B, it is denied. All local regulations, other than those expressly waived in Appendix B, are applicable to this project, including regulations for which no waiver was requested. No "plan waiver" is granted.

## TERMS AND CONDITIONS

Subject to the conditions set for hereinafter, the Board grants this comprehensive permit (the "Permit") to the Applicant for the ~~p~~Project proposed. The Board notes that 760 CMR 56.05(8)(d) provides that:

"The Board shall not issue any order or impose any condition that would cause the building or operation of the Project to be Uneconomic...."

In reaching this Decision, the Board has endeavored to ensure that the conditions herein do not render the ~~p~~Project uneconomic and that the conditions are consistent with local needs. If the Applicant should appeal this Decision to the Housing Appeals Committee and the Committee were to find that any particular condition or conditions render the ~~p~~Project uneconomic or not consistent with local needs, the Board requests that any order to the Board to remove or modify any condition in this Decision be limited to such particular condition or conditions and that all other conditions and aspects of this Decision be confirmed.

1. The Comprehensive Permit application was based on a Project Eligibility letter issued to the Applicant by DHCD on November 19, 2019 under the Low Income Housing Tax Credit (LIHTC) program. This Permit is conditional upon receipt of Final Approval from DHCD and the grant of subsidy funding through the LIHTC program or other subsidy approved by DHCD. Grant of LIHTC funding (or other subsidy approved by DHCD) is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure (except such work performed by the Town for installation of the water line), or issuance of any building permit.
2. ~~This~~ Permit is conditional upon the execution of a Regulatory Agreement for this Permit by DHCD and the Applicant, in form and substance as required by DHCD, to which the Town of Truro shall be made a party and beneficiary. The Town shall have enforcement rights under the Regulatory Agreement as to the affordability restrictions. The execution of ~~of, and compliance with~~ such Regulatory Agreement is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure (except such work performed by the Town for installation of the water line), or issuance of any building permit. No building permit shall be granted until the terms and conditions of the Regulatory Agreement and project eligibility letter have been complied with in full, except for those which by their nature are to be complied with during and after construction of the project.
3. The Project shall conform to the following Plans ("Plans of Record"):  
"Cloverleaf Truro Rental Housing, 22 Highland Road, Permit Set", Sheets 1-6, prepared by J.M. O'Reilly & Associates, Inc., consisting of:  
Sheet 1, "Site Plan" dated November 1, 2019  
Sheet 2, "Sewage – Drainage Site Plan – 40B Permit Set" dated Nov. 1, 2019

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Sheet 3, “Sewage Details – 40B Permit Set” dated November 1, 2019

Sheet 4, “Site Details – 40B Permit Set” dated November 1, 2019

Sheet 5, “Site Details – 40B Permit Set” dated November 1, 2019

Sheet 6, “Erosion Control Site Plan” dated July 28, 2020

“Cloverleaf Truro Rental Housing, Watershed Areas Plan,” prepared by J.M. O’Reilly & Associates, Inc., dated September 16, 2020

“Cloverleaf Truro Rental Housing, Swept-Path Analysis - Entrance,” prepared by J.M. O’Reilly & Associates, Inc., dated September 2, 2020

“Cloverleaf Truro Rental Housing, Swept-Path Analysis - Exit,” prepared by J.M. O’Reilly & Associates, Inc., dated September 2, 2020

“Cloverleaf Truro Rental Housing, Truro, Massachusetts, Buildings 1-3, 2-4 and 6-8,” prepared by Spring Hill Design, dated September 4, 2020, cover sheet and Sheets A1.1, A1.2 (scale 1/8”=1’), A.2.1 (scale 1/4”=1’)

“Cloverleaf Truro Rental Housing, Truro, Massachusetts, Building 5-7,” prepared by Spring Hill Design, dated September 4, 2020, cover sheet and Sheets A1.1, A1.2, A2.1 (scale 1/4”=1’)

“Cloverleaf Truro Rental Housing, Truro, Massachusetts, Buildings 9-11, 10-12, 13-15, 17-19, and 18-20,” prepared by Spring Hill Design, dated September 4, 2020, cover sheet and Sheets A1.0, A2.1 (scale 1/8”=1’)

“Cloverleaf Truro Rental Housing, Truro, Massachusetts, Buildings 13-15 and 14-6,” prepared by Spring Hill Design, dated September 4, 2020, cover sheet and Sheets A1.0, A2.1 (scale 1/8”=1’)

“Cloverleaf Truro Rental Housing, Truro, Massachusetts, Building 21,” prepared by Spring Hill Design, dated September 17, 2020, cover sheet and Sheets A1.0– A1.3, inclusive; A2.1-A2.2 (scale 1/8”=1’) and “Schematic Section of Building 21” dated September 25, 2020 (1 page)

“Cloverleaf Truro Rental Housing, Truro, Massachusetts, Building 22-24 and 23-25,” prepared by Spring Hill Design, dated September 4, 2020, cover sheet and Sheets A1.0 – A1.2, inclusive; A2.1-A2.2 (scale 1/8”=1’)

“Landscape Planting, Fencing, Trash/Bike Storage, Exterior Lighting Plan, Cloverleaf Truro Rental Housing” dated October 5, 2020

“Fence/Storage Images, Cloverleaf Truro Rental Housing,” Spring Hill Design, dated June 19, 2020

“Exterior Palette/Lighting, Cloverleaf Truro Rental Housing,” Spring Hill Design, dated October 5, 2020

“Interior Palette, Cloverleaf Truro Rental Housing,” Spring Hill Design, dated June 19, 2020

“Control Room Schematic Design, Cloverleaf Truro Rental Housing,” Spring Hill Design dated October 5, 2020

“Building Height Calculations – 1-3, 2-4, 6-8, Cloverleaf Truro Rental Housing,” Spring Hill Design, dated February 20, 2020

“Building Height Calculations – 5-7, Cloverleaf Truro Rental Housing,” Spring Hill Design, dated February 20, 2020

“Building Height Calculations – 9-11, 10-12, 17-19, and 18-20, Cloverleaf Truro Rental Housing,” Spring Hill Design, dated February 20, 2020, revised August 31, 2020

“Building Height Calculations – 13-15 and 14-16, Cloverleaf Truro Rental Housing,” Spring Hill Design, dated February 20, 2020, revised August 31, 2020

“Building Height Calculations – 21, Cloverleaf Truro Rental Housing,” Spring Hill Design, dated February 20, 2020, revised September 24, 2020

“Building Height Calculations –22-24 and 23-25, Cloverleaf Truro Rental Housing,” Spring Hill Design, dated February 20, 2020

“Illustrated Site Plan, Cloverleaf Truro Rental Housing” dated October 12, 2020

All of the above as further modified to comply with the requirements of this Decision; as well as any changes deemed necessary by the Building Inspector or the Board's consultant for compliance with this Decision.

4. Substantive revisions to the Project or the Plans shall not be permitted without the written approval of the Board. If, between the date that this decision is filed with the Office of the Town Clerk and the completion of the Project, Applicant seeks to change any details of the Project (as set forth in the Plans, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the change requested pursuant to 760 CMR 56.05 (11). The Board will address such requests under the procedures set out in that regulation.
5. Where this Decision provides for the submission of plans or other documents to the Building Inspector, Department of Public Works, the Board, or its agent, a written response shall be provided the Applicant as to whether such plans or other documents are consistent with this Decision within forty-five days of receipt of such plans or other documents.

**Regulatory Compliance: State, Federal and Local**

6. Development of the Project shall comply in all respects with all terms and conditions contained in the Project Eligibility approval for the Project issued by DHCD dated November 19, 2019 and any modifications thereto
7. The Project shall conform to all applicable requirements of the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board (MAAB).
8. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Endangered Species Act, G.L. c. 131, s. 23 and 321 CMR 10.00 et seq. This includes but is not limited to compliance with the "Box Turtle Protection Plan for Cloverleaf Affordable Housing Project" approved by the Division of Fisheries and Wildlife on May 27, 2020, received from MassAudubon, and any amendments to this Plan or additional requirements imposed by the Division.
9. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Historical Commission.
10. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations adopted by the Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, § 61-62H).
11. The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Massachusetts Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, private wells, resource protection, water supply and low impact development best management practices
12. Stormwater management systems shall meet the Guidelines of the Department of Environmental Protection Storm Water Management Policy and Handbook (Vols. 1 & 2), as revised
13. The Project, including but not limited to site work, drainage, utilities, and construction of dwelling units and related improvements shall comply with all other applicable state and federal regulations.
14. Copies of all applications to, and approvals from State and Federal agencies shall be submitted to the Board or its designated agent prior to recording of Final Plans.
15. The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Truro Board of Health, except as expressly waived in this Decision.
16. The Project shall comply with the Town of Truro Zoning Bylaw in effect at the time of the Application, except as expressly waived in this Decision

17. The Project shall comply with all Town of Truro rules, regulations, and other local bylaws and requirements not expressly waived by this Decision.

**Dwelling Units; Affordability in Perpetuity**

18. The project shall consist of thirty-nine units, twenty-four of which shall be contained in twelve duplex buildings and fifteen of which shall be contained in a three-story building (also containing community and office space) constructed in conformity with the Plans specified in Condition 3 above.
19. No fewer than twenty (20) of the Project units constructed and rented shall be affordable, in perpetuity, to individuals and/or families earning no more than 60% of Area Median Income (AMI) as calculated pursuant to formulas determined by the U.S. Department of Housing and Urban Development (HUD) or DHCD. No fewer than an additional six (6) units constructed and rented shall be affordable, in perpetuity, to individuals and/or families earning no more than 80% of the AMI; and no fewer than an additional six (6) units shall be affordable, in perpetuity, to individuals and/or families earning up to 110% of AMI ("affordable units").
20. No dwelling unit identified as an "affordable unit" may be rented to anyone other than a qualified tenant as required by this Decision and consistent with the requirements of DHCD and other state agencies governing the rental of below market rate units in a comprehensive permit project; provided, however, if a tenant was income-eligible at initial occupancy, and tenant's income has increased above eligibility limits, the Applicant shall comply with the Subsidizing Agency's requirements for converting another unit into an affordable unit.
21. The affordable units shall be evenly distributed within the Project and shall be indistinguishable in architectural style, exterior finish materials, and exterior appearance from market units.
22. Each affordable unit shall be rented pursuant to an affordable housing restriction, more fully described below, ensuring that only income eligible individuals or families may rent the dwelling unit.
23. The affordable units shall permanently remain affordable units, for so long as the Property does not comply with the Town's Zoning Bylaw without the benefit of this Comprehensive Permit, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.
24. An affordable housing restriction, enforceable by the Town of Truro requiring that the affordable units remain affordable in perpetuity, in a form approved by counsel for the Town, shall be recorded senior to any liens on the Project locus to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. This affordable housing restriction shall reflect the affordability levels stated in paragraph 19~~8~~ above.

Commented [BHC3]: Added at Applicant's request.

25. All units shall be and shall remain eligible to be included in the Town's Subsidized Housing Inventory, as maintained by DHCD. The Applicant shall cooperate with the preparation of request forms to add Project to the Town's SHI. .

#### **Management Documents and Agreements with Town**

26. The Applicant shall prepare documents in a form that conforms to this Decision and applicable law, designed to manage the Project and ensure that the terms and conditions of this Decision are enforced.
27. Management Plan. The Applicant shall submit to the ~~Town of Truro Planning Department~~ a Management Plan (similar to the "Cloverleaf Truro Housing Property Management Plan" submitted during hearing), stating the roles and responsibilities of the project Owner ("CHR Cloverleaf Limited Partnership" or other) and the Management Agent (Community Housing Resource, Inc. or other), and governs project operations, including marketing, leasing, financial operations, and compliance. All updates to the Management Plan shall be submitted to the ~~Planning Department~~ Town.
28. Maintenance Plan. The Applicant shall submit to the ~~Planning Department~~ Town of Truro and the Department of Public Works a detailed Maintenance Plan governing repair and maintenance of the Project. The Maintenance Plan shall address Project buildings, ways, parking areas, landscaping, lighting, stormwater management systems, and other Project infrastructure and facilities. The Maintenance Plan shall ensure that the terms and conditions of this Decision are enforced. All updates to the Maintenance Plan shall be submitted to ~~the Planning Department as agent for the Board~~ Town and DPW.
29. The Applicant shall enter into a Lease Agreement, and any other Agreements deemed necessary by the Town, governing the rights and responsibilities of the parties with respect to the Project and the Project Site. Such Agreement(s) shall be approved by Town Counsel.

Commented [BHC4]: Applicant's request; makes sense

#### **Profitability**

30. The Project shall be limited to the profit allowed under the Regulatory Agreement (the "allowable profit").
31. Any profit that is above the allowable profit pursuant to the Regulatory Agreement, shall be paid in accordance with 760 CMR 56.04(8)(c).
32. The Applicant shall provide to the Board or its designated agent a copy of all financial statements and documentation required by the Regulatory Agreement.

#### **Marketing and Local Preference**

33. Prior to construction of the Project, the Applicant shall submit to the Board copies of the Affirmative Fair Housing Marketing Plan and Tenant Selection Plan for the affordable units which will be submitted to DHCD and conforming to all requirements imposed by federal and state regulations.

34. To the extent allowed under G.L. c. 40B and other applicable law and in a form approved by the Subsidizing Agency and/or the Project's monitoring agent, the Project's Tenant Selection Plan shall provide a Local Preference category for up to seventy (70% ) of the Affordable units at initial occupancy. The Town will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence.

35. The maximum number of affordable units allowed by law and the applicable subsidy program, but not more than seventy percent of the units, shall be reserved for households that qualify for inclusion in the above ~~L~~ocal ~~p~~reference category. ~~A lottery shall be established in a form approved by the Subsidizing Agency and/or the Project's monitoring agent to effectuate this local preference, with an approved secondary lottery for all other Applicants~~

**Commented [BHC5]:** Applicant's edit. Presumably up to DHCD

36. This local preference shall be implemented by the Applicant and the Applicant shall maintain records of its marketing efforts, which records shall be open to review by the Town ~~(subject to applicable state or federal law regarding privacy)~~ for compliance with the local preference set forth herein, to the extent such local preference has been allowed by the Subsidizing Agency.

37. The local preference shall be implemented pursuant to procedures approved by the Subsidizing Agency. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units shall be borne by the Applicant.

38. The Applicant shall submit to the Board a report on marketing activity at the Project demonstrating compliance with the local preference requirement pursuant to the plan approved by the subsidizing agency as set forth ~~above, following the initial lease up, below~~

#### **Conditions Precedent to Commencement of Project**

The conditions below are conditions precedent to the Applicant's Project construction. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until the following conditions are satisfied:

39. The Building Inspector has reviewed and approved detailed construction drawings for the entirety of the Project, including all buildings, structures, ways, and underground utilities ("Final Plans"). The Building Inspector shall review the Final Plans for conformance with this Decision; for compliance with local requirements not waived in the Permit; and with state and federal codes. All construction plans shall be stamped by a registered architect or registered professional engineer, as may be applicable. The Board may engage, at the Applicant's expense and upon prior agreement to scope and cost of services, one or more agent to review the plan(s) and make recommendations for approval or disapproval to the degree that a plan or plans are inconsistent with this decision. Copies of the Final Plans shall be filed in hard copy and in digital form with

the Building Department; the Board; the Planning Department; and the Department of Public Works

40. The Board's consultant has reviewed and approved detailed and final plans of the Project's storm water management system. These plans shall be consistent with DEP's Storm Water Management standards, policies, and handbooks; shall address any effects on abutters; and assure that there will be no detrimental drainage or erosion impact on abutting properties
41. The Board's consultant has reviewed and approved a final Stormwater Operations and Maintenance Plan for the Project roadway, infrastructure and drainage systems, both during and post-construction
42. The Board's consultant has reviewed and approved an Operations and Maintenance Plan for the Project's wastewater disposal system
43. The Board's consultant has reviewed and approved an erosion control plan to be in effect for the duration of site disturbance and project construction. This Plan shall ensure that there is no erosion or sedimentation from the project site onto Highland Road, the Route 6 layout, or abutting properties. The Plan shall include measures for extreme weather events. During installation of the water line to and within the Project site, the Department of Public Works shall ensure compliance with the erosion control plan. Prior to commencement of the Applicant's construction of the Project, the Board's consultant shall inspect and approve the installed erosion control measures, and shall inspect the Project site as needed to ensure ongoing compliance with the erosion control plan
44. The Director of DPW has reviewed and approved 1) a plan showing areas of the site proposed for vegetative clearing; limit of construction activity, soil stockpiling areas, construction staging, and refueling and storage area(s); and 2) the Applicant's installation of limit of work construction fencing
45. ~~Performance Guaranty. The Applicant has provided to the Town Clerk a Performance Guarantee, in form and amount satisfactory to Town Counsel, to secure the completion of the Project's ways, utilities, and drainage systems~~
46. The Applicant has submitted to the DPW Director and the Building Inspector a construction schedule identifying the sequence and approximate dates of all key stages of construction
47. A Regulatory Agreement, similar in form to that published by DHCD, and revised for consistency with this Decision has been executed by the Applicant, DHCD, and the Town of Truro, and has been recorded in the Barnstable Registry of Deeds. The Regulatory Agreement shall:
  - A. Name the Town of Truro named as a party and beneficiary thereto;
  - B. Provide that 20 of the units will be affordable in perpetuity to households at no more than 60% of AMI; that an additional 6 units will be affordable in perpetuity to

**Commented [BHC6]:** Moving this to pre- building permit issuance conditions

households at no more than 80% of the AMI; and that an additional 6 units will be restricted to up to 110% of AMI;

C. Provide for a Monitoring Agent for the Project. ~~Designate a Monitoring Agent for the Project approved by the Town, such approval not to be unreasonably withheld.~~

D. Provide that the Project shall comply with profit limitations required under G.L. c. 40B;

E. Provide that any excess profit shall be paid in accordance with 760 CMR 56.04 (8)(c).

The Regulatory Agreement shall be subject to review and approval by the Board and its legal counsel as ~~to form and~~ consistency with this Decision, such approval not to be unreasonably withheld.

48. The Applicant, the Board and DHCD have executed a Monitoring Agreement, similar in form to the Monitoring Agreement published by DHCD and revised for consistency with this Decision. The Monitoring Agreement shall be subject to review and approval by the Board and its legal counsel as ~~to form and~~ consistency with this Decision, said approval not to be unreasonably withheld.

49. The Final Plans have been reviewed and approved by the Fire Chief for hydrant locations; access to each building for fire fighting purposes; and adequacy of the access roadway from Highland Road and emergency access roadway to Route 6 for fire truck ingress and egress.

50. A NPDES Storm Water Pollution Prevention Plan or Stormwater Pollution and Prevention Plan (SWPPP) has been prepared. The final SWPPP shall be provided to all contractors and subcontractors during construction. Copies of the SWPPP shall be submitted to the DPW Director and Planning Department.

51. A Disposal Works Construction Permit been obtained from the Board of Health under Title 5 of the State Environmental Code.

52. The Applicant shall provide the Town of Truro, in form and substance approved by Town Counsel, Applicant's agreement that the Town of Truro shall be free of any liability for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with relation to this Project, and that Applicant on behalf of itself and its successors and assigns has consented and agreed to indemnify the Town, its employees and officials for any harm, damage or injury caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with regard to this Project.

**Conditions Prior to Application for Issuance of a Building Permit (Applicant's Project)**

**Commented [BHC7]:** Changed at Applicant's request. Up to Board.

53. The Applicant shall obtain Final Approval from DHCD (or other subsidizing agency) and shall provide evidence of such Final Approval to the Building Department and the Board.

54. The Applicant shall record this Decision and the above-described Regulatory Agreement in the Barnstable Registry of Deeds with the Final Plans, and provide proof of such recording to the Board. No building permit shall issue until this condition is satisfied

55. The Applicant shall provide ~~to the~~ Board and ~~to the~~ Building Department ~~with six-a~~ sets of full sized Final Plans (and any additional sets as requested by the Building Department) and a digital copy of the final endorsed set. No building permit shall issue until this condition is satisfied

56. A Project Manager, Project Superintendent, and Jobsite Foreman shall be identified by the Applicant. The name and phone numbers, including emergency phone numbers of these individuals, shall be provided to the Department of Public Works, the Building Inspector and the Planning Department as agent for the Board.

56-57. Performance Guarantee. Prior to issuance of a Building Permit, the Applicant shall provide the Town with a performance guarantee in an amount satisfactory to Town Counsel in consultation with the DPW Director, and in a form approved by Town Counsel, such approval not unreasonably withheld, to secure the completion of the Project's ways, utilities and drainage systems. No performance guarantee shall be provided for any MassWorks grant work. The performance guarantee shall be released by the Board in increments upon request by the Applicant as corresponding to sections of the Project completed in a satisfactory manner.

**Commented [BHC8]:** Incorporates most of Applicant's requested language.

#### **Conditions Relating to Construction**

57-58. Prior to Applicant's commencement of work on the Project site, at a time designated by the DPW Director, a pre-construction kick-off meeting shall be held with the DPW Director, Project Manager, Project Superintendent, and Jobsite Foreman. Daily meetings shall be held with the DPW Director and Jobsite Superintendent. A meeting every two weeks shall be held with the Project Manager, Jobsite Superintendent, DPW Director and Town's consultant

58-59. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust, odor, and use of Town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. No construction activity shall commence on any day Monday through Friday before 7:00 AM or on Saturday before 9:00 AM. Construction activities shall cease by 67:00 PM on all days. No construction activity whatsoever shall take place on Sunday or federal holidays. For purposes of this condition, construction activity shall include, but not be limited to: start-up of equipment or machinery, removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities; and removal of stumps and debris.

- ~~59-60.~~ The removal of trees, shrubs, and natural ground cover on the site shall be minimized to preserve the natural environment to the highest degree possible.
- ~~60-61.~~ Except as otherwise provided by this Decision, roadway design and construction standards shall conform to the requirements of the Truro Planning Board Subdivision Rules and Regulations. Roadway design plans and construction details shall be provided for approval by the DPW Director prior to roadway construction
- ~~61-62.~~ All electric, cable, and telephone utilities shall be underground and shall conform to the utility companies' requirements. Utilities plan and construction details shall be provided to the DPW Director.
- ~~62-63.~~ All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the Project site. No stumps or other debris shall be buried on the Project site
- ~~63-64.~~ All staging areas, including without limitation parking areas for construction personnel, portable toilets, temporary work facilities, etc. shall be on the Property.
- ~~64-65.~~ If construction activity ceases for longer than 30 days, then written notice shall be provided by the Applicant to the Building Commissioner at least 48 hours before resuming work. The Building Commissioner may require that any foundation, trench, structure, equipment or other hazard be secured as necessary, in his opinion, including but not limited to installation of fencing and/or filling of trenches
- ~~65-66.~~ If construction is temporarily suspended during the growing season, all exposed areas shall be stabilized by seeding and/or mulching within 14 days of suspension of construction. If construction is temporarily suspended outside the growing season, all exposed areas shall be stabilized by mulching and tack within 14 days of suspension of construction. Slopes steeper than 3:1 shall be stabilized by netting and pinning during suspension of construction.
- ~~66-67.~~ Soils disturbed in earth removal on the Project site, not utilized elsewhere on the site, shall be retained for removal use by the Town, on such terms and by such means directed by the Conservation Agent and DPW Director.
- ~~67-68.~~ Invasive Plants. No plants on the Commonwealth's Department of Agriculture "Invasive Plants" list (see <https://www.mass.gov/service-details/invasive-plants>) may be used in the landscaping or any other area of the proposed project
- ~~68-69.~~ All residential buildings shall be constructed so as to allow for rooftop installation of solar panels. ~~The Applicant has committed to such installation on Building 21.~~
- ~~69-70.~~ The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the site, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations

Commented [BHC9]: Removed per Board

~~70,71.~~ Any damage to public roads incurred during construction of the Project shall be repaired and/or replaced to the satisfaction of the Department of Public Works.

~~71.~~ To ensure compliance with the terms and conditions of this Decision, prior to requesting any Certificate of Occupancy, the Applicant shall submit to the Building Inspector, DPW Director, and Planning Department as agent for the Board, complete and detailed "As-Built" Plans of the Project, including buildings, utilities, roadway and associated infrastructure. The As-Built Plans shall be submitted as full-size plans and in digital form. These plans shall be approved by the Board or its agent for consistency with this decision; such approval shall not be unreasonably be denied or delayed. No Certificate of Occupancy shall issue, nor shall any surety be released, unless the As-Built plans conform to this Decision

~~72.~~ No certificates of occupancy for any building shall be issued until the Board or its agent finds that all improvements required by this Decision have been constructed and installed so as to adequately serve the building for which the occupancy permit is sought,said Development.

~~73.~~ Prior to the issuance of a certificate of occupancy for any building, the Applicant shall submit a letter from the Project engineer certifying that the building for which the occupancy permit is sought, and any related improvements, have been constructed in conformity with the Plans of Record.

~~72,74.~~ To ensure compliance with the terms and conditions of this Decision, prior to issuance of the final Certificate of Occupancy, the Applicant shall submit to the Building Inspector, DPW Director, and Planning Department as agent for the Board, complete and detailed "As-Built" Plans of the Project, including buildings, utilities, roadway and associated infrastructure. The As-Built Plans shall be submitted as full-size plans and in digital form. These plans shall be approved by the Board or its agent for consistency with this decision; such approval shall not be unreasonably be denied or delayed. The final Certificate of Occupancy shall issue unless the As-Built plans conform to this Decision.

~~73,75.~~ Temporary certificates of occupancy will not be permitted. The Fire Department will not sign the occupancy permit until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, and all required inspections have been completed by the Fire Department

~~74,76.~~ Pursuant to an agreement reached between the Applicant and an abutter to the Project, the Applicant shall construct and maintain a stockade fence along the full length of the shared property line between the project parcel and Atlas Map 36 Parcel 170 as shown on the Landscaping, Planting and Fencing Plan; and shall supply, at the Applicant's expense, thirty (30) Leyland Cypress trees,15 gallon container grown stock of 5 to 7 feet in heightof agreed-upon variety; 10 small trees of two-foot variety; drip irrigation tubing; planting soil, leaf compost and wood chip mulch.

## Wastewater Treatment

**Commented [BHC10]:** Taken together, these paragraphs allow certificates of occupancy to issue as buildings are constructed, with certification by Project engineer as to conformity with the Plans of Record. As-Built Plans not required until completion.

**Commented [BHC11]:** Removed per Board

**Commented [BHC12]:** In last email from abutter; Applicant to confirm

As discussed in the Waiver Appendix, the proposed Project cannot be constructed without a waiver of Article 14 of the Board of Health regulations (“Nitrogen Loading Requirements”), which requires a minimum of ten thousand square feet of Buildable Upland for every 110 gallons per day of design flow, and requires wastewater disposal systems to meet the standards for Nitrogen Sensitive Areas defined in 310 CMR 15.215 irrespective of whether the properties are located within Nitrogen Sensitive Areas as so defined.” This results in a limitation of wastewater flow to 440 gallons per day per acre.

The Cloverleaf site contains a total of 3.91 acres or 170,320 square feet. Under Article 14, the maximum wastewater discharge permitted would be 1,874 gallons per day. The proposed system for this project has a design flow of 7,480 gallons per day. Waiver of Article 14 is required to allow this discharge in excess of the 1,874 gpd limit for a parcel of this size.

The Applicant proposes use of the BioMicrobics BioBarrier wastewater treatment facility to treat wastewater effluent generated by the Project. This is an Innovative/Alternative technology certified for enhanced nutrient removal by the Department of Environmental Protection. This system may be designed to achieve a level of nitrogen removal such that the concentration of nitrogen in effluent averages 5 mg/L. The following conditions are imposed to ensure protection of public health and safety, specifically, downgradient private wells:

77. The maximum total nitrogen concentration in the wastewater effluent allowed for this system 10 mg/L measured at any time following the first six months of operation. The six-month timeframe recognizes there is a startup period during which the system reaches its full treatment capacity. If, after three months of operation an effluent sample contains a total nitrogen concentration above 10 mg/L, the applicant shall follow the steps listed in the operation and maintenance condition (#3) below to inspect and repair the system and bring it back into compliance.
78. The system shall be designed and operated to achieve an average total nitrogen concentration of 5 mg/L. The 5 mg/L average will be calculated as a rolling average taking into account all measurements taken in the prior 12 months. The calculation of the rolling average will begin following the initial six-month start-up period.
79. The applicant shall finalize an Operation and Maintenance plan that will be reviewed and approved by the Board of Health prior to system startup to govern the management of the facility. This plan shall incorporate the requirements of the Pilot Approval granted by DEP for the BioBarrier system (DEP, July 11, 2016, Pilot Approval Renewal For BioMicrobics BioBarrier system). It shall also include the additional items listed below for the operation of the system, monitoring of influent and effluent, and monitoring of groundwater upgradient and downgradient of the disposal facility.
80. The applicant will hire a certified operator to inspect, maintain and monitor the facility. The agreement with the certified operator shall run for a period of two (2) years and will be renewed with the same or other certified operator in subsequent two-year periods.

81. Wastewater influent and effluent will be monitored monthly upon the system's start up and shall continue monthly for a period of one year after the development is fully occupied. Influent and effluent shall be monitored for the parameters contained in the DEP Pilot Approval of the BioBarrier system and any other parameters requested by the Board of Health. Notice of when the 12-month period begins, following full occupancy, shall be provided to the Truro Board of Health. Monitoring data will be submitted to the Board of Health and the Barnstable County Department of Health and the Environment within two weeks of receipt of the data.
82. Upon the completion of the 12-month period, the owner and operator may request approval from the Board of Health to adjust the monitoring to a quarterly schedule. Approval from the Board of Health is required to make this change.
83. Prior to the start-up of the system, two (2) proposed monitoring wells shall be installed as shown on the proposed Site Plans. These two monitoring wells, and one existing well downgradient of the Cloverleaf parcel shall be tested quarterly for total nitrogen, pH, specific conductance, and fecal coliform and any other parameters requested by the Board of Health. The first samples will be collected prior to system startup. The groundwater monitoring data will be submitted to the Board of Health within two weeks of receipt of the data.
84. The O&M plan shall include the As-Built Plan of the installed BioBarrier system.
85. The operator and owner will prepare an annual report summarizing the system's performance and submit it to the Board of Health. Within 30 days of the submission of the annual report, the owner and operator shall meet with the BOH or its agent, to review the previous year's O&M.
86. If the effluent concentration from the BioBarrier system exceeds 10 mg/L, the owner and operator will inform the Board of Health within one week and follow the recommended system modifications, procedures and treatment adjustments outlined in DEP's Pilot Approval Renewal to bring the system back into compliance. If the operator is not successful in bringing the system into compliance with the 10 mg/L total nitrogen maximum concentration within two months, the owner and Operator shall notify the DEP and the BOH of additional actions they will take to bring the system into compliance. The required repair/replacement timelines shall conform with the requirements outlined in the Pilot Approval or as required by the BOH upon the issuance of the Disposal Works Permit. During the noncompliance period the BOH, after a public hearing, may require the system to stop discharge of the effluent to the soil absorption systems.
87. If the effluent concentration exceeds 10 mg/L for more than one month, the owner will increase the frequency of groundwater monitoring at the three monitoring wells. Samples will be taken monthly for six months after the system is back in compliance and effluent concentrations are again below 10 mg/L.

88. Once the system is installed and operational, the continual O&M will address the replacement and/or repair of the various mechanical components within the system. The Operator shall review with the Board of Health the necessary mechanical components which should be inventoried and available onsite for immediate installation. These items will be listed in the approved O&M plan and inventoried at the site to make the necessary repairs to keep the system in compliance.

#### Administrative

~~75-89.~~ The fees for consultant reviews incurred in the Board's review of this project application shall be the obligation of the Applicant. All consultant fees incurred prior to the issuance of this decision are due sixty days after this Decision is filed with the Town Clerk. No site disturbance shall commence until all past fees are paid in full.

~~76-90.~~ The Applicant shall be responsible for fees incurred pursuant to consultant review of all project documents and all site inspections as provided for in the Conditions above

~~77-91.~~ This permit cannot be transferred without approval of the Board and modification of this Decision following public hearing.

~~78-92.~~ At the time the Applicant submits a Chapter 40B cost certification to DHCD, the Applicant shall provide copies to the Board and the Truro Select Board.

~~93.~~ Except for roadway snow removal, sanding and sweeping, the Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the Project, including but not limited to structures; driveways and parking areas; landscaping; trash/recycling disposal and pickup; stormwater management system, and wastewater disposal system. The Town of Truro shall have no legal or financial responsibility for the installation, operation, and maintenance of the above

94. If construction authorized by this Permit has not begun within three years of the date on which the Permit becomes final, except for good cause, the Permit shall lapse. This time period shall be tolled for the time required to pursue or await the determination on any appeal on any other state or federal permit or approval required for the Project.

~~79.~~

~~80-95.~~ Construction, once commenced, shall progress through to completion as continuously and expeditiously as possible and in accordance with the construction sequence and timetable provided.

~~81-96.~~ Funding provided by Town. The Applicant shall comply with any conditions associated with funding provided through allocation(s) by the Town, prior to or subsequent to issuance of this permit, including but not limited to allocations pursuant to the Community Preservation Act.

~~82.~~97. The Applicant shall comply with all Final Approval requirements as determined by DHCD (or other subsidizing agency)

~~83.~~98. If at any time it appears that the Applicant is in violation of an affordable housing restriction, then the Board may pursue such enforcement rights as it may have under the affordable housing restriction and/or applicable law.

~~84.~~99. The Applicant shall provide the Board with copies of any and all documents and statements provided by the Applicant to DHCD (or other subsidizing agency) or its designated auditor of the Applicant's costs and revenues for informational purposes.

~~85.~~100. The Town, by and through the Board or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.

~~86.~~101. The Applicant shall enter into a springing affordable housing restriction and regulatory agreement with the Town ("Town Regulatory Agreement"), which shall be signed by all necessary parties, including all mortgagees and lien holders of record for the property, and recorded at the Registry of Deeds prior to issuance of any building permit. ~~and signed by all necessary parties, including all mortgagees and lien holders of record.~~ The Town Regulatory Agreement shall become effective only if and when the Regulatory Agreement with DHCD or other subsidizing agency is terminated, expires, or is otherwise no longer in effect and is not replaced with another regulatory agreement with another subsidizing agency.

The Town Regulatory Agreement:

(i) Shall require that the Project's Affordable Units shall remain affordable rental units at the levels designated in this Decision, as modified by DHCD and contained in the Subsidizing Agency's Regulatory Agreement, contain the same terms regarding Affordable Units as the Regulatory Agreement with DHCD or other subsidizing agency, and shall provide that the Affordable Units remain affordable at the designated levels in perpetuity, meaning in perpetuity, and for so long as the Project does not conform to local zoning, or the longest period allowed by law, whichever period is longer; and

(ii) Shall restrict or limit the dividend or profit of the Applicant only if and as required under G.L. c.40B and 760 CMR 56.00, et seq., and no independent limitation on dividends or profits is imposed hereunder; and

~~(iii)~~ Shall constitute a restrictive covenant; shall be recorded against the Property; and shall be enforceable by the Town;

~~87.~~102. Agents, successors and assigns. All terms and conditions of this permit shall be binding upon the Applicant and all agents, successors and assigns.

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