

Mark Pruhenski
Town Manager

E-mail: mpruhenski@townofgb.org
www.townofgb.org



Town Hall, 334 Main Street
Great Barrington, MA 01230

Telephone: (413) 528-1619 x2900
Fax: (413) 528-2290

TOWN OF GREAT BARRINGTON MASSACHUSETTS

OFFICE OF THE TOWN MANAGER

Selectboard Special Meeting via Zoom and in person at 334 Main Street Great Barrington MA
Order of Agenda for Monday, March 13, 2023, at 6:00 PM

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84727797185?pwd=NDFRUjFITE12eDN3bE5LaTNBQ0RmZz09>

Webinar ID: 84727797185

Dial-in, audio-only: (929) 205 6099

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's July 16, 2022 Revised Order extending remote participation by all members in any meeting of a public body, this meeting of the Selectboard will be conducted both in-person and via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on town's website, at www.townofgb.org. For this meeting, members of the public and committee members may attend the meeting in person, or, for those who wish to do so remotely may by following the instructions at the top of this agenda. For those who are not in-person every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means.

1. CALL TO ORDER

2. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS

3. TOWN MANAGER'S REPORT

a. Housatonic Water Works

4. PUBLIC HEARINGS

a. Continued from February 27, 2023: Special Permit application from Berkshire Aviation Enterprises, Inc., 70 Egremont Plain Road, Great Barrington, to permit the airport in an R4 zone, in accordance with Sections 3.1.4 E(1), 7.2 and 10.4 of the Zoning Bylaw.

- i. Open Public Hearing
- ii. Explanation
- iii. Public comments; speak in favor or opposition
- iv. Close Public Hearing
- v. Selectboard discussion
- vi. Motion; decision

5. CITIZEN SPEAK TIME

- a. *Citizen Speak Time is an opportunity for the Selectboard to listen to residents. Topics of particular concern or importance may be placed on a future agenda for discussion. This time is reserved for town residents only unless otherwise permitted by the chair, and speakers are limited to 3 minutes each.*

6. SELECTBOARD'S TIME

7. MEDIA TIME

8. ADJOURNMENT

NEXT SELECTBOARD MEETING

Budget Public Hearing March 22, 2023

Selectboard Regular Meeting March 27, 2023

Selectboard Regular Meeting April 10, 2023

Selectboard Regular Meeting April 24, 2023

Town Meeting Monday May 1 @ 6:00PM

Town Meeting Second Night Thursday May 4 @6:00 PM, if needed



Mark Pruhenski, Town Manager

Pursuant to MGL. 7c. 30A sec. 20 (f), after notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium. At the beginning of the meeting, the chair shall inform other attendees of any such recordings. Any member of the public wishing to speak at the meeting must receive permission of the chair. The listings of agenda items are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may be brought up for discussion to the extent permitted by law.

TOWN OF GREAT BARRINGTON

PUBLIC HEARING

The Great Barrington Selectboard will hold a public hearing on Monday, February 27, 2023 at 6:00 pm, to act on the Special Permit application from Berkshire Aviation Enterprises, Inc., 70 Egremont Plain Road, Great Barrington, to permit the airport in an R4 zone at 70 Egremont Plain Road, in accordance with Sections 3.1.4 E(1), 7.2 and 10.4 of the Zoning Bylaw. The meeting will be held at Town Hall, 334 Main Street, 2nd floor, Great Barrington, MA 01230, and also via Zoom remote video/teleconference. The Zoom link and meeting ID will be listed on the meeting agenda, which is posted to the calendar on the Town website at least 48 hours in advance of the meeting. The application may be viewed in Town Clerk's office or parties may email the Planning Department at crembold@townofgb.org for an electronic copy.

Stephen Bannon, Chair

Please publish January 19 and January 26, 2023

Berkshire Eagle

**Public comments received by noon Friday,
March 10, 2023 may be viewed by
following the link:**

**[https://drive.google.com/drive/
folders/1g_nPbTKCrSXuyS59DqxPgMXc6t
OkXA0R?usp=share_link](https://drive.google.com/drive/folders/1g_nPbTKCrSXuyS59DqxPgMXc6tOkXA0R?usp=share_link)**

TOWN OF GREAT BARRINGTON
Application for a Special Permit
to the Selectboard or Planning Board

FORM SP-2
Long Form
REV. 12-2020

TOWN CLERK
GREAT BARRINGTON
JAN 10 2023 PM 3:11

FOR OFFICE USE ONLY

Number Assigned 932-23 Date Received 1/10/23
Special Permit Granting Authority SB
Copy to Recommending Boards 1/12/23
Advertised 1/19 & 1/26
Public Hearing 2/22/23
Fee: \$300.00 Paid: ✓

APPLICATION FOR SPECIAL
PERMIT UNDER TOWN ZONING
BYLAWS FOR TOWN OF
GREAT BARRINGTON,
MASSACHUSETTS

IDENTITY OF PROPERTY: MAP 31 LOT 67 BOOK 280 PAGE 14

Address of property: 70 Egremont Plain Road

Zoning District(s): R4 Two Acre Residential; Water Quality Protection Overlay District
including any
overlay districts

I. GENERAL INFORMATION

- A. Type of Special Permit Requested: Selectboard Special Permit
Under Section(s) 3.1.4.E, 7.2 and 10.4 of the Great Barrington Zoning Bylaws.
- B. Name of applicant: Berkshire Aviation Enterprises, Inc.
- C. Address & telephone no. of applicant: 70 Egremont Plain Road, Great Barrington, MA (413) 528-1010
- D. If applicant is not owner, state interest or status of applicant in land. Attach copy of any option or purchase agreement. N/A
- E. Name of owner exactly as it appears on most recent tax bill: Berkshire Aviation Enterprises, Inc.
- F. Address of owner: 70 Egremont Plain Road, Great Barrington, MA
- G. Telephone number of owner: (413) 528-1010
- H. Is the proposed development served by :
Public Water System () Yes (X) No
Public Sewer System () Yes (X) No
- J. Is an environmental study or document required for this project under state or federal laws?
() Yes (X) No If yes, specify type of study and agency requiring it. _____
- K. Attach a brief description of proposed use of property, including the existing use of the property, and how the project is in harmony with the Great Barrington Master Plan. (Copies of the Master

Plan are available for free download from the Town website. Hard copies can be read at the Clerk's office or the Town libraries.)

- L. Attach a list of abutters, owners of land directly opposite on any public or private street or way and owners of land within 300 feet of the property line, including bordering towns. The list must be prepared and certified by the Great Barrington Board of Assessors office.
- M. Include information as applicable in Sections II, III, IV, V, VI and VII.
- N. One original and fourteen (14) exact copies of all required documentation must be submitted. One electronic version in PDF format must also be submitted.

II. PLAN OF PROPERTY

- A. A site plan for the proposed development, drawn to a scale of 1"=40', each page of which shall be titled, dated, numbered and signed by the preparer. If the preparer is an engineer, architect, surveyor or other professional registered in Massachusetts, *each page shall bear his or her professional seal*. This plan shall clearly show the following:
 - 1. Owner and applicant
 - 2. Engineer or Architect
 - 3. Date
 - 4. Scale and north arrow
 - 5. Zoning district (s)
 - 6. Names of adjacent streets
 - 7. All existing lot lines and dimensions
 - 8. Lot size
 - 9. Locations and dimensions of all existing and proposed structures, including additions thereto
 - 10. Number of dwelling units existing and proposed
 - 11. Location and number of parking spaces, with each space numbered
 - 12. Location of driveways and/or access roads with directional arrows as needed
 - 13. Location of all streams, ponds, wetlands, steep slopes, and other significant topographic features of this property
 - 14. Provisions for drainage, watercourses, easements and systems
 - 15. Existing and proposed uses of structures
 - 16. Screening and/or buffer provisions, as well as all other landscaping proposed
 - 17. Site photos as needed to illustrate the existing and proposed conditions
 - 18. Locus map (locating site within the neighborhood and town)
 - 19. Proposed open space or park area(s) if any
 - 20. Such other data as the Planning Board may require
- B. Other requirements (if and as requested by the Planning Board, Conservation Commission, Selectboard, Board of Health or Building Inspector):
 - 1. General characteristics of land under a separate plan at a scale of 1"=100' showing the general characteristics of all lands within 200 feet of the site including structures, parking areas, driveways, pedestrian ways, natural features and existing land uses. Land uses shall be designated by shading the plan with colored pencil and using standard land use colors.
 - 2. Architectural drawings, prepared by a Registered Architect, at a scale sufficient to show the details of the proposed building (s) and signs but not less than 1/8"=1".
 - 3. A separate plan, prepared by a Registered Engineer or Architect, drawn to a scale of 1"=500' which shall clearly show:
 - a. the project site
 - b. location of public and private wells within ½ mile of any lot lines
 - c. Contour lines at 2-foot intervals

- d. Location of wells on the site or within 400 feet of lot lines
- e. Location of wetland area
- 4. Common ownership land/adjacent lots usage.
 - a. A copy of those portions of the Assessors' map(s) showing all contiguous land held in common ownership with the land affected by the special permit, or all contiguous land held in common ownership by the applicant
 - b. Land use of adjacent lots

III. PUBLIC WATER – WASTE DISPOSAL

- A. Availability of public water
 - 1. Estimate demand.
 - 2. Submit documentation of available water pressure.
- B. Availability of public sewer
 - 1. Estimate daily flow of public sewer.
 - 2. Describe disposal facilities and submit evidence of all necessary state and local approvals.
 - 3. Submit evidence of all required approvals by the Massachusetts Department of Environmental Protection of any proposed wastewater treatment system requiring such approval and of any industrial waste treatment or disposal system

IV. ENVIRONMENTAL REPORTS

- A. Submit copies of any environmental reports or documents prepared for the project required by State or Federal law or regulations.
- B. Submit copies of all environmental reports required by the Conservation Commission, Planning Board, Board of Health or any other local board or official.
- C. Description of open space or park(s) if any
 - 1. Letter to the Town of Great Barrington offering open land to the Town, *or*
 - 2. Document showing terms of permanent covenant of open space.
- D. Hazardous Materials
 - 1. A complete list of all materials, pesticides, fuels and toxic or hazardous materials to be used or stored on the premises. Generic names should be supplied as listed in the Massachusetts Department of Protection's Hazardous Waste Regulations (310 CMR 30.000) and, where applicable, the Industry and EPA Hazardous Waste Number should be supplied. The list should be accompanied by a description of measures proposed to protect from vandalism, corrosion, leakage and for control of spills.
 - 2. A description of possible toxic or hazardous wastes to be generated indicating storage and disposal method.

V. PLANNED PHASING

Planned phasing, if project is to be constructed in more than one phase. For multi-family dwellings, cluster residential development and single family attached dwellings, the design of roadways, access roads, sidewalks, common drives, and utilities shall generally conform to the standards set forth in the Rules and Regulations Governing Subdivision of Land in the Town of Great Barrington; regardless of whether the development is a subdivision within the legal definition.

VI. IMPERVIOUS SURFACES

Description of the extent of impervious surfaces, of provisions for collecting surface runoff and of provisions for on-site recharge and removal of contaminants.

VII. GROUNDWATER


Except for those uses applying for a special permit solely for excavating or drilling, a Groundwater Quality Certification, prepared by a Massachusetts Registered Professional Engineer, experienced in hazardous waste disposal, groundwater evaluation or hydrogeology may be required. Said Groundwater Quality Certification shall state that: "as a result of the project, the groundwater quality at the boundary of the premises, resulting from on-site waste disposal, other on-site operations, natural recharge and background water quality,

- a. will not fall below the standards established by the DEP in "Drinking Water Standards in Massachusetts", or
- b. Where existing groundwater quality is already below those standards, will not be further degraded."

Date: December 27, 2022


Owner Signature

Co-owner Signature


Applicant's Signature

SPECIFICS:

1. All site plans and specifications must be signed and dated by the preparer.
2. **ALL OWNERS** of property must sign the application
3. A copy of the special permit procedures is available upon request.
4. Fee for application is \$300.00 to cover the cost of the public hearing notices and notification to parties in interest.
5. Once all the necessary papers, maps, etc. as indicated above are correlated into fourteen sets, **call the Town Planner's office at 413-528-1619 ext. 7 to arrange an appointment to file your application.** The application will be reviewed for completeness and a date for a public hearing before the Granting Authority will be scheduled. Meetings before the recommending Boards such as the Planning Board, Conservation Commission and Board of Health will also be arranged at this time.

PLEASE READ AND SIGN BELOW

ALL COSTS INCURRED BY THE TOWN FOR THE EMPLOYMENT OF EXPERTS OR CONSULTANTS REQUIRED BY ANY TOWN BOARD FOR THE PURPOSE OF ANALYZING OR EVALUATING ANY PROJECT THAT IS A SUBJECT OF A SPECIAL PERMIT APPLICATION SHALL BE ASSESSED TO THE APPLICANT AND SHALL CONSTITUTE PART OF THE APPLICATION FEE. A COPY OF THIS REGULATION SHALL BE PROVIDED TO EACH APPLICANT WHO SHALL SUBMIT WITH HIS APPLICATION A SIGNED STATEMENT THAT HE HAS READ THIS REGULATION AND AGREES TO BE BOUND BY IT.

I have read the above regulation and agree to be bound by it.

Applicant's Signature 

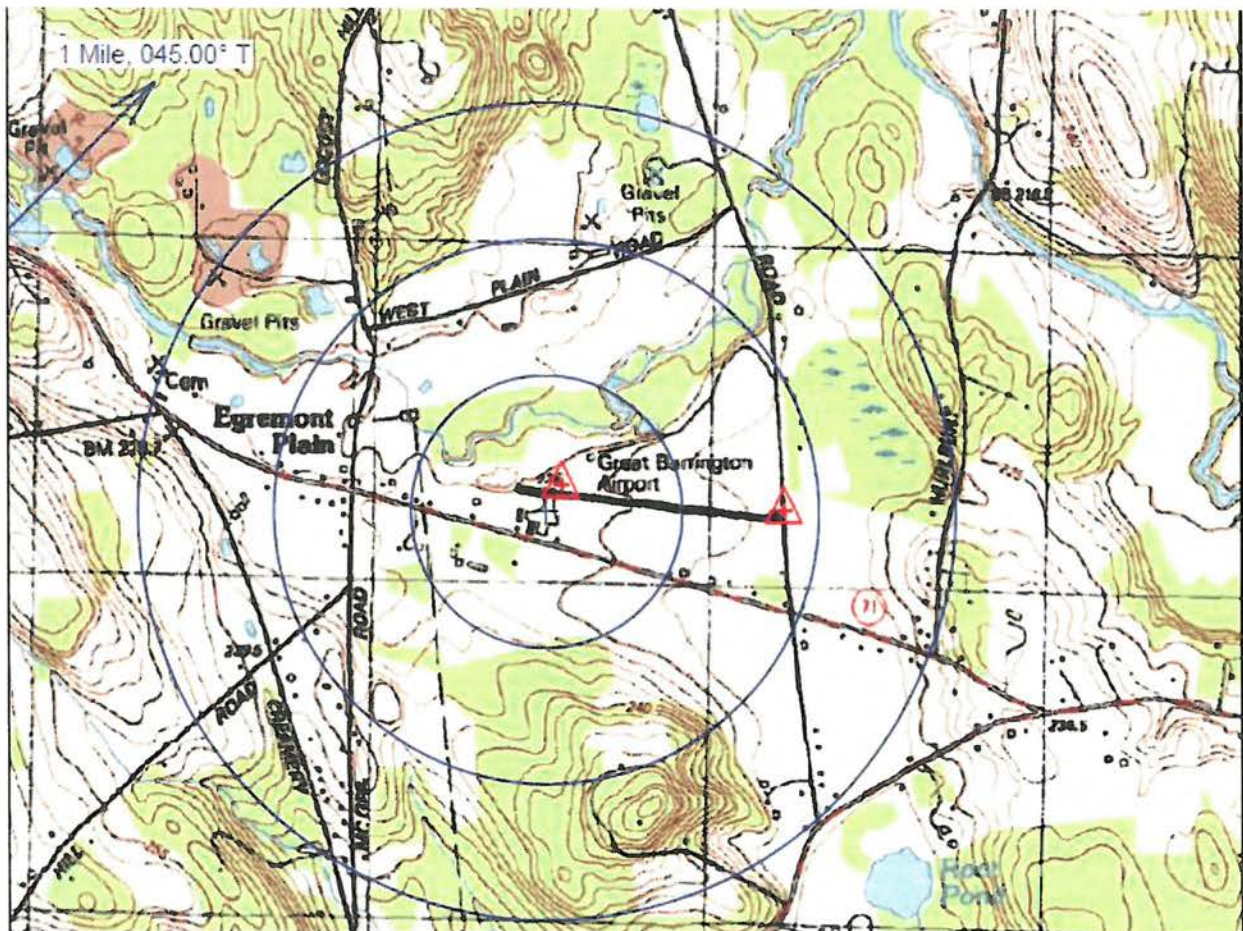
Date December 27, 2022

ADDENDUM TO APPLICATION FOR A SPECIAL PERMIT TO THE SELECTBOARD

Berkshire Aviation Enterprises, Inc., Owner and Applicant
70 Egremont Plain Road, Great Barrington, Massachusetts (Assessors Map 31, Lot 67)

The Applicant is the owner of multiple parcels of land comprising approximately 92.5 acres of land (collectively, the “Property”) known as Walter J. Koladza Airport a/k/a Great Barrington Airport (the “Airport”), which is located in the R4 Two Acre Residential Zoning District within the Water Quality Protection Overlay District.

Figure 1. Locus Map



The Property has approximately 1,140 feet of frontage on Egremont Plain Road and approximately 1,971 feet of frontage on Seekonk Cross Road. There are four structures located on the Property – 1. office, flight school and operations building; 2. hangar; 3. hangar shop; and 4. “old hangar” – as well as a paved taxiway, grass taxiway, aircraft parking area; two aircraft parking “tie down” areas, and a gravel parking lot for automobiles. See the

enclosed site plan prepared by James M. Scalise II, a licensed engineer, titled “Existing Conditions Plan Prepared For: Great Barrington Airport Located at Egremont Plain Road, Great Barrington, Massachusetts” dated January 17, 2020, as revised August 4, 2020, August 18, 2020, and October 13, 2020, by S-K Design Group, Inc., Civil Engineers Surveyors Consultants, 2 Federico Drive, Pittsfield, MA 01201.

Public Utilities: The Property does not utilize public utilities- it is serviced by a private drinking water well and onsite sewage disposal system.

Environmental Reports: The Application does not involve new construction. Therefore, no environmental reports are required.

Planned Phasing: There is no planned phasing in connection with the Application.

Impervious Surface: The Application contemplates no change to the impervious surface located at the Property.

Groundwater Analysis: There is no change contemplated with respect to the Property. Therefore, a groundwater analysis is not required.

Community Master Plan - Town of Great Barrington: The Airport is in harmony with the Town of Great Barrington Community Master Plan (the “Master Plan”) because it “...combines the best aspects of rural living with amenities and services of an urban community.” (Community Master Plan, Volume 1, Land Use, P. 18) The Airport also promotes the core initiatives of the Master Plan by protecting “the special places and features- our compact village centers, historic treasures, natural resources, farms, and open space – that contribute to Great Barrington’s distinctive character.” and supporting “technology, land use and development practices, public transportation and infrastructure that reduce reliance on fossil fuels, enhance our economic base, and promote connectivity.” (Community Master Plan, Volume 1, Core Initiatives, PP 4-5)

The Property has been used continuously as an airport since at least September, 1931. (See “*Great Barrington Great Town Great History*” by Bernard A. Shaw, 1999, PP 606-608, with a citation to “*Airport dedication in Great Barrington draws 6500 during three days,*” *Berkshire Evening Eagle*, 8 September 1931). Zoning was first enacted in Great Barrington on March 31, 1932. Moreover, in his opinion dated March 23, 2022, in connection with a request for opinion regarding an application for site plan approval submitted by the Applicant on January 21, 2022, Town Counsel, David J. Doneski, Esq., notes that “a 2017 special permit decision of the Zoning Board of Appeals (Decision No 867-16), on an application to build a deck at the rear of the existing office building, stated: ‘The Board unanimously agreed that the Airport was a legal pre-existing nonconforming property.’” (See **Exhibit A**) Therefore, based on the information set forth herein, pursuant to M.G.L. ch. 40A, § 6, ¶ 1, the use of the Property as an Aviation Field is a nonconforming use, which is protected by law.

In order to address the legal status of the Airport and address historical concerns about potential expansion of the Airport, the Applicant requests a special permit pursuant to Section 3.1.4.E(1) of the Town of Great Barrington Zoning Bylaw (the “Zoning Bylaw”) establishing Aviation Field as a legal use at the Property. To be clear, this Application contemplates the continued existence of the Airport as currently constituted – the Applicant does not propose any new construction or other expansion of the current nonconforming use.

To the contrary, in connection with the Application, the Applicant proposes that the following conditions be placed on the Special Permit, none of which are currently required pursuant to the Airport’s current nonconforming status:

1. Hours of Operation:
 - a. During fall, winter and spring, there shall be no continuous takeoffs and landings after 8:00 pm.
 - b. During summer, there shall be no continuous takeoffs and landings after 7:00 pm, unless unusual circumstances, such as a new student solo flight, are present.
 - c. There shall be no unnecessary aircraft “run-ups” before 8:00 am.
 - d. On Sundays, there shall be no continuous student takeoffs and landings before 9:00 am.
2. There shall be no helicopter flight school operated at the Property.
3. With respect to “Blackhawk” helicopters, the Airport shall use its best efforts to work with the United States Army to limited training activity at the Airport (the Airport has no control over current training activity).
4. There shall be no glider aircraft activity, except in extraordinary circumstances.
5. No jet aircraft greater than 6,000 pounds ramp weight shall use the Airport, except in the event of an emergency.
6. Parking shall only be allowed in Airport parking lots.

Special Districts

Flood Plain Overlay District (FPOD): Section 9.1.5 of the Zoning Bylaw consists of the following:

9.1.5 Special Permit Required. Any person desiring to establish any permitted use in a FPOD involving or requiring the erection of new structures and/or alteration or moving of existing structures or dumping, filling, transfer, relocation or excavation of earth materials or storage of materials or equipment, or parking of recreational vehicles, shall submit an application for a special permit to the Special Permit Granting Authority (SPGA) in accordance with the provisions of Section 10.4. The Selectboard shall be the SPGA for floodplain special permits.

The floodplain associated with the Property is located along the Green River as shown in Figure 2. The Application does not involve any of the activities requiring a special permit under Section 9.1.5 of the Zoning Bylaw. Therefore, a FPOD special permit is not required.

Water Quality Protection Overlay District (WQPOD):

Section 9.2.11 (Nonconforming Uses) of the Zoning Bylaw provides, in pertinent part: “Continuation of a legally preexisting nonconforming use shall be allowed, provided that: 1. The nonconformity is not increased or expanded...” **The Application does not involve increasing or expanding the nonconformity. Therefore, the existing nonconforming use is allowed in the WQPOD.**

Section 9.2.12 (Uses and Activities Requiring a Special Permit) consists of the following:

9.2.12 Uses and Activities Requiring a Special Permit. The following uses and activities are permitted only upon the issuance of a special permit by the Selectboard under such conditions as it may require:

1. Enlargement or alteration of existing uses that do not conform to the WQPOD;
2. Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning district (except as prohibited hereunder). Such activities shall require a special permit to prevent contamination of groundwater;
3. Any use that will render impervious more than 15% of any lot or parcel or 2,500 square feet, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, recharge shall be by stormwater infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all nonresidential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner. Special permits for nonresidential uses as described in this subsection are not allowed in the Surface Water Source Protection Zones A and B.

The Application does not involve any enlargement or alteration of existing uses that do not conform to the WQPOD. In addition, the handling of handling of toxic or hazardous materials at the Property is exempt from the provisions of Section 9.2.12.2 pursuant to the provisions of Section 9.2.8(4)a. because the Airport is a very small quantity generator pursuant to 310 CMR 30.00. Finally, the Application does not involve any change to the impervious area of the Property.

Special Permit Criteria

Pursuant to the Zoning Bylaw, the criteria for granting of a Special Permit for an Aviation Field are set forth in Sections 7.2 and 10.4 of the Zoning Bylaw.

Section 7.2 of the Zoning Bylaw consists of the following:

7.2 AVIATION FIELDS

7.2.1 General. Any aviation field, public or private, with essential accessories, shall comply with the following special requirements:

1. It shall be so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic or other objectionable condition.

2. In accordance with Chapter 90 of the Massachusetts General Laws, as amended by Section 35B, no person shall erect or add to the height of any structure within a rectangular area lying 1,500 feet on either side of the extended center line of a runway or landing strip of an airport approved by the Commission for a distance of two miles from the end of such runway or landing strip so that the height thereof will be more than 150 feet above the level of such runway or landing strip, nor, within that portion of such area which is within a distance of 3,000 feet from the end of such runway or landing strip, so that the height thereof will be greater than a height above the level of such runway or landing strip determined by the ratio of one foot vertically to every 20 feet horizontally measured from the end of such runway or landing strip, unless a permit therefore (sic) has been granted by the Commission (Massachusetts Aeronautics Commission).

7.2.2 Exemption. The provisions of this Subsection shall not apply to structures which will be 30 feet or less in height above ground.

The Airport, as a public use airport, is exempted by Massachusetts General Laws, Chapter 90, Section 39B, ¶ 5 from Section 7.2 of the Zoning Bylaw because Section 7.2 has not been approved by the Aeronautics Division of the Massachusetts Department of Transportation.

G.L, c. 90, § 39B, ¶ 5 provides as follows:

A city or town in which is situated the whole or any portion of an airport or restricted landing area owned by a person may, as to so much thereof as is located within its boundaries, make and enforce rules and regulations relative to the use and operation of aircraft on said airport or restricted landing area. Such rules and regulations, ordinances or by-laws shall be submitted to the commission and shall not take effect until approved by the commission.

G.L. c. 90, § 35 sets forth the following definitions:

The following words and phrases used in sections thirty-five to fifty-two, inclusive, shall have the following meanings, unless a different meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the manifest intention of the general court:-- ...

(e) "Airport", any area of land or water other than a restricted landing area, which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(f) "Restricted landing area", any area of land or water other than an airport which is used, or is made available, for the landing and take-off of aircraft; provided, that the use of such an area may be restricted from time to time by the commission.

In the case of *Roma III Ltd vs Board of Appeals of Rockport*, 478 Mass. 580, 592 n. 9 (2018) the Massachusetts Supreme Judicial Court held that while a "noncommercial private restricted landing area" is not exempted from local zoning by G.L. c. 90, § 39B, the Court stated as follows in n. 9 (bold face type added for emphasis) referring to Aeronautics Division of the Massachusetts Department of Transportation:

Nothing in this opinion is intended to disturb either the notice and safety requirements for noncommercial private restricted landing areas mandated under G. L. c. 90, § 39B, fourth par., or **the continuing authority of the division under the aeronautics code over aircraft landing areas that do not fall within the narrow definition of a noncommercial private restricted landing area.**

Further, 702 C.M.R. 2.01(1) sets forth the following definition (bold face typed added for emphasis):

As used in 702 CMR, the following words shall have the meanings set forth in 702 CMR 2.01, unless otherwise required in 702 CMR 2.00. ...

Private Restricted Landing Area. A landing area that is used **solely** for non-commercial, **private use by the owner or lessee of the landing area.**

The fact that Section 7.2 of the Zoning Bylaw predates M.G.L., c. 90 § 39B does not change this analysis.

The case of *Pearson v. Town of Plymouth*, 44 Mass. App. Ct. 741, 741-742 (1998) involved a town by-law that was approved by the Town of Plymouth, Massachusetts Town Meeting in 1977 which provided that no float planes could operate from or upon any pond in Plymouth, except upon an emergency basis. In 1980 a provision was added to G.L. c. 131, § 45 providing that local rules or regulations affecting the use and operation of float planes on great

ponds partially or completely located within the boundaries of such municipality “shall first be approved by the Massachusetts aeronautics commission [the commission].” The Town of Plymouth argued that, despite the new provision added to G.L. c. 131, § 45, the by-law prohibiting float planes continued to be valid because the new provision could not be enforced retroactively.

The Appeals Court in *Pearson* provided, in pertinent part:

“Even if we were to characterize the relief sought as “retroactive” because it attacks the present validity of the previously valid by-law, we would not regard the nullification of the by-law as impermissibly retroactive. The proviso, for the reasons described below, is “remedial in a broad sense,” *Welch v. Mayor of Taunton*, 343 Mass. 485, 488, 179 N.E.2d 890 (1962), and that legislative purpose, coupled with the absence of any adverse effect on the previous exercise of a vested right, permits its retroactive application. *Ibid*. The complaint seeks only a declaration that the town may not henceforth enforce the by-law; the plaintiff does not seek relief from a fine or penalty for the previous exercise of a presumed vested right.

The sole issue in this case as it relates to Section 7.2 of the Zoning Bylaw is whether Section 7.2, which has not been approved by the Aeronautics Division, is enforceable against the Airport. Under the cases cited herein (and several others), the answer is simply “no.”

Therefore, in considering the Application, the Selectboard cannot and should not consider the criteria set forth in Section 7.2 of the Zoning Bylaw.

Section 10.4.2 of the Zoning Bylaw consists of the following:

10.4.2 Criteria. Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

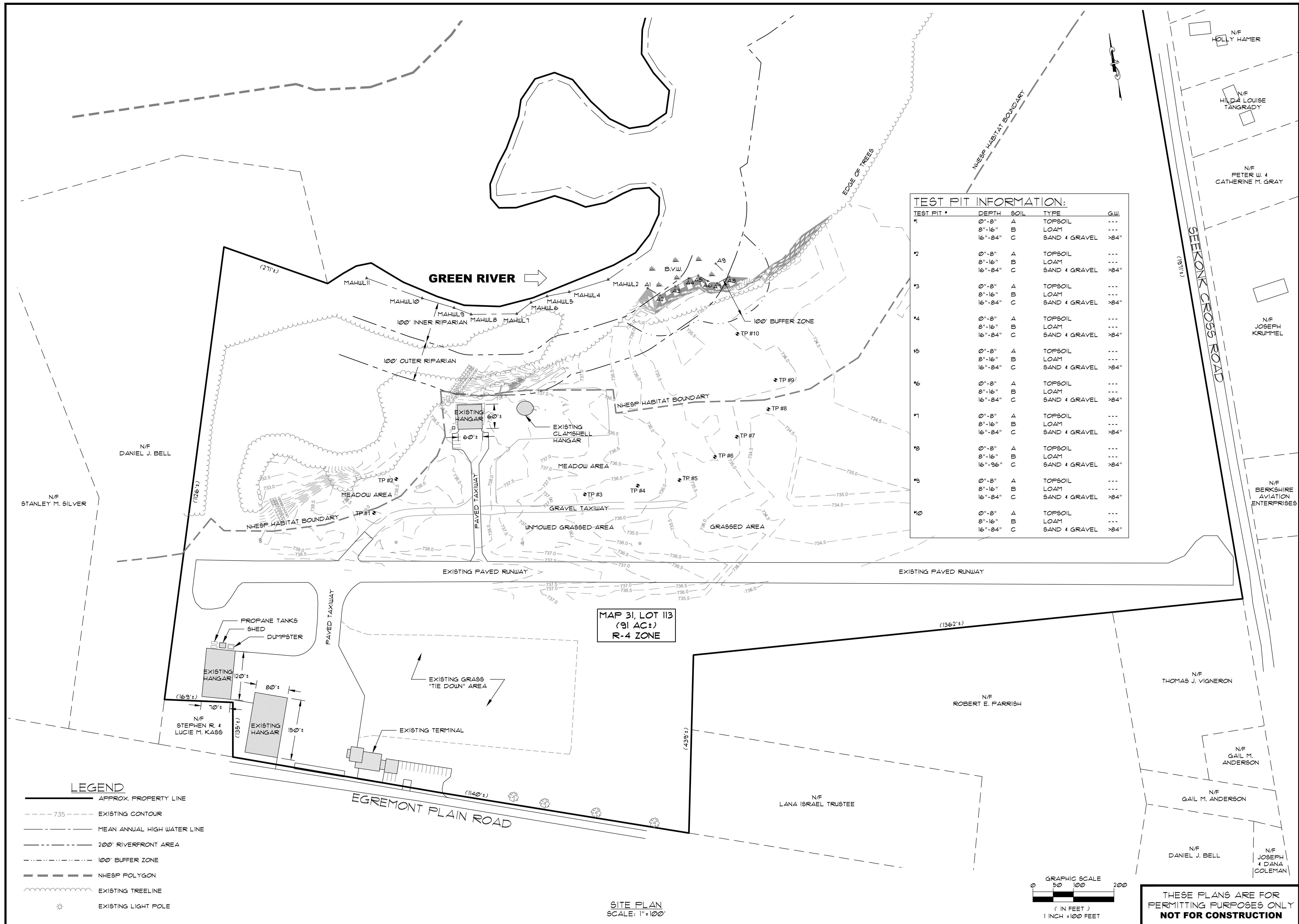
1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;

5. Impacts on the natural environment; and

6. Potential fiscal impact, including impact on town services, tax base, and employment.

1. Social, economic, or community needs which are served by the proposal: The Airport has been operating as an Aviation Field since at least September, 1931. The Airport currently serves Great Barrington and surrounding communities by providing a community general aviation airport in furtherance of the Commonwealth of Massachusetts' goal of advancement of aeronautics in the Commonwealth. The Airport provides a landing area for emergency medical transportation aircraft. The Airport operates a flight school which provides educational opportunities and career advancement to the citizens of Great Barrington, Berkshire County, and beyond. The Airport regularly attracts visitors to Great Barrington, which, in turn, has a positive economic impact on the Town of Great Barrington. In addition, the Airport provides employment to the citizens of Great Barrington and surrounding communities.
2. Traffic flow and safety, including parking and loading: The Airport is a very low traffic generator. The Airport provides adequate off-street parking. There will be no change to traffic flow and safety or parking and loading.
3. Adequacy of utilities and other public services: The Airport does not utilize public utilities. The Property is serviced by a private drinking water well and septic system, both of which are sufficient for the Airport's current needs, as well as its needs for the foreseeable future.
4. Neighborhood character and social structures: As previously stated the Airport has been operating as an Aviation Field since at least September, 1931. Therefore, much of the neighborhood has "grown up" around the Airport. Surrounding uses include residential and agricultural. The conditions proposed by the Applicant set forth herein will improve the neighborhood character and social structure.
5. Impacts on the natural environment: Grant of a special permit will have no additional impacts on the natural environment.
6. Potential fiscal impact, including impact on town services, tax base, and employment: There will be no adverse fiscal impact or other impact on town services if the special permit is granted. To the contrary, granting the special permit will ensure that the current employees of the Airport remain employed and the fiscal benefits currently enjoyed by the Town of Great Barrington, including, without limitation, real estate tax receipts and tourist dollars, as a result of the Airport's operations continue.

By submitting this special permit application and seeking issuance of a special permit, Berkshire Aviation Holdings, Inc. and Berkshire Aviation Enterprises, LLC, are not waiving any of their rights, including, without limitation, their rights under M.G.L. c. 90, § 39B, ¶ 5 and their rights as Defendants-Intervenors and Counterclaim Plaintiffs in the pending Land Court case of Holly Hamer, Marc Fasteau and Anne Fredericks vs. Zoning Board of Appeals of the Town of Great Barrington, No. 22 MISC 000244 (GHP). All such rights are hereby expressly reserved. This application is submitted in the hope of reaching a settlement of outstanding zoning issues concerning the Airport, thereby avoiding the need for Great Barrington taxpayers, the Application, and the three Land Court plaintiffs to spend many thousands of dollars in litigation that may take years to reach a final resolution.



TEST PIT INFORMATION:

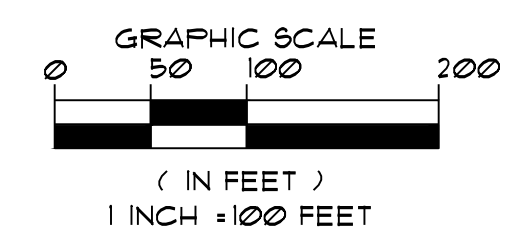
TEST PIT #	DEPTH	SOIL	TYPE	G.W.
*1	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-84"	C	SAND & GRAVEL	>84"
*2	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-84"	C	SAND & GRAVEL	>84"
*3	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-84"	C	SAND & GRAVEL	>84"
*4	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-84"	C	SAND & GRAVEL	>84"
*5	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-84"	C	SAND & GRAVEL	>84"
*6	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-84"	C	SAND & GRAVEL	>84"
*7	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-84"	C	SAND & GRAVEL	>84"
*8	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-96"	C	SAND & GRAVEL	>84"
*9	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-84"	C	SAND & GRAVEL	>84"
*10	0'-8"	A	TOPSOIL	...
	8'-16"	B	LOAM	...
	16'-84"	C	SAND & GRAVEL	>84"

MAP 31, LOT 113
 (91 AC±)
 R-4 ZONE

LEGEND

- APPROX. PROPERTY LINE
- - - 735 - - - EXISTING CONTOUR
- MEAN ANNUAL HIGH WATER LINE
- - - 200' RIVERFRONT AREA
- - - 100' BUFFER ZONE
- - - NHESP POLYGON
- ~ ~ ~ EXISTING TREELINE
- ⊛ EXISTING LIGHT POLE

SITE PLAN
 SCALE: 1" = 100'



THESE PLANS ARE FOR PERMITTING PURPOSES ONLY
NOT FOR CONSTRUCTION

PLANS TO ACCOMPANY PERMIT APPLICATIONS
 PREPARED FOR:
GREAT BARRINGTON AIRPORT
 LOCATED AT:
 EGREMONT PLAIN ROAD
 GREAT BARRINGTON, MASSACHUSETTS

Design Group, Inc.
 Civil Engineers • Surveyors • Consultants
 2 FERRELL DRIVE • WESTFIELD, MASSACHUSETTS 01091 • (413) 443-3337

PLAN DESCRIPTION:
EXISTING CONDITIONS PLAN

SK DESIGN GROUP PROJECT #:
130020

COMMONWEALTH OF MASSACHUSETTS
 JAMES M. SCALISE, II
 CIVIL
 No. 30963
 PROFESSIONAL ENGINEER

James M. Scalise II
 SK DESIGN GROUP PRESIDENT
 LICENSE #39863
 PROFESSIONAL OF RECORD
 PHONE: 413-443-3337

REVISION:	
DRAWN BY:	CHEKED BY:
AMIS	JMS II
ORIG. DATE:	SHEET NO.:
JANUARY 6, 2023	2
ISSUED FOR:	OF
PERMIT	2
SCALE:	AS NOTED

C:\SK DESIGN GROUP\2013\190080 Gt Barrington Airport Expansion\Drawings\Special Permit\190080SP (REVISED 1-4-2023).dwg
 User Name: amis
 Date: January 06, 2023 - 9:57am



Figure 2

EXHIBIT A

David J. Doneski Opinion

Dated: March 23, 2022



The Leader in Public Sector Law

T: 617.556.0007 F: 617.654.1735

101 Arch Street, 12th Floor, Boston, MA 02110

By Electronic Mail

To: Planning Board
cc: Town Manager

From: David J. Doneski

Re: Application of Berkshire Aviation Enterprises, Inc.
for Site Plan Approval, 70 Egremont Plain Road

Date: March 23, 2022

You have requested an opinion regarding the site plan approval application of Berkshire Aviation Enterprises, Inc. (BAE), submitted on January 21, 2022. The application describes BAE's proposed demolition of the existing office building at its airport property at 70 Egremont Plain Road and construction of a new building in its place, on the same footprint. You have asked whether nonconforming use issues, as presented in the February 23, 2022 letter to the Planning Board from Attorney Thaddeus Heuer on behalf of certain Seekonk Cross Road residents, make the site plan ineligible for approval. In my opinion, for the reasons stated below, the Planning Board may act on the application and approve the site plan if it finds that the plan complies with the standards for approval in Section 10.5 of the Zoning Bylaw.

Section 10.5 of the Zoning Bylaw sets forth the requirements and procedures for "Site Plan Review." Subsection 10.5.1, Applicability, states as follows:

The following types of activities and uses require site plan review by the Planning Board:

1. Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multi-family structure;
2. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family structure or purpose involving more than 6 spaces; . . .

BAE's application acknowledges that the proposed demolition and reconstruction will involve each of these two activities.

Subsection 10.5.5, Approval, states:

Site Plan approval shall be granted upon determination by the Board that the plan meets the following objectives. (emphasis supplied) The Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations.

Subsection 10.5.5 continues: "New building construction or other site alterations shall be designed with consideration of the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, in order to:" It then lists six sets of development impacts that are to be "minimize[d]," including cutting and filling, obstruction of scenic views, visual intrusion, and contamination of groundwater; together with a set of design elements that should be "maximize[d]," accessibility, and pedestrian and vehicular safety. A final standard to be met is stated as "8. Ensure compliance with the provisions of this Zoning Bylaw, including parking and landscaping."

In my view, the eight criteria in subsection 10.5.5 relate, by their terms, to physical and development standards that construction or site alterations must meet. The criteria are applicable to "design" of building construction and site alterations.

On the issue of nonconforming use raised in the letter of opposition, there are numerous cases addressing rights and restrictions applicable to non-conforming uses under both the state Zoning Act, G.L. c. 40A, and local zoning bylaws and ordinances. In my view, it is not necessary to include here an extensive discussion on the applicable principles from those cases. Instead, I would direct your attention to three points from the case law:

- 1) The Rockport bylaw that was challenged in the Berliner v. Feldman case cited in the letter provided that "[a]ny lawful building or structure or use of a building, structure, or premises existing at the time this by-law is adopted, even if not in conformity with its provisions, may be continued [and may be] rebuilt if damaged or destroyed," subject to certain conditions, including board of appeals approval for enlargement. The Supreme Judicial Court found that the bylaw was valid, and included the following statement in its decision: "there is no statutory prohibition against a zoning provision which grants special rights to the owner of a preexisting nonconforming use to rebuild a structure which has been destroyed by catastrophe." 363 Mass. at 770.
- 2) In the case of Welch-Filippino v. Zoning Board of Appeals of Newburyport, 86 Mass. App. Ct. 258 (2014), a decision dealing with an appeal of a special permit (under the zoning ordinance) for replacement of a dimensionally conforming structure for a nonconforming nursing home use with a new facility, the Appeals Court stated the following:

Memorandum to Planning Board, March 23, 2022

Berliner did not involve the grandfathering protection afforded to a preexisting nonconforming use under G.L. c. 40A, § 6. Rather, it involved interpretation of the provisions of a *local zoning by-law* regarding whether a preexisting nonconforming structure (an inn) that was damaged or destroyed by fire might be rebuilt. Because *Berliner* concerned the reconstruction of a preexisting nonconforming structure devoted to a nonconforming use (conducting an inn in a residence district), to the extent that the statutory predecessor of G.L. c. 40A, § 6, was implicated at all, the applicable provision was that allowing for local regulation when there is a “reconstruction, extension or structural change” of a nonconforming structure. See *id.*, at 771, 773, 774. See also Healy, Massachusetts Zoning Manual § 6.7.2 (4th ed. 2007) (building in *Berliner* appeared to be dimensionally nonconforming). Accordingly, the court’s statement to the effect that the statute “does not confer the right to erect a new building in place of an existing building used for a nonconforming purpose,” *Berliner v. Feldman, supra*, at 770, must be read in that limited context. 86 Mass. App. Ct. at 264-265.

- 3) “General Laws c. 40A, §6, however, creates a statutory requirement that “sets the floor” throughout the Commonwealth for the appropriate protections from local zoning bylaws to be afforded properties and structures protected under that statute. . . . A municipality’s bylaws may not afford fewer protections to preexisting nonconforming structures or uses than does the governing statute. Bellalta v. Zoning Board of Appeals of Brookline, 481 Mass. 372, 386 (2019). In other words, a municipality may afford greater protections.

The Great Barrington Zoning Bylaw does afford greater protections, directly addressing replacement of nonconforming structures in section 5. 7, entitled ‘Reconstruction After Catastrophe or Voluntary Demolition.’ Section 5.7 provides as follows: “A nonconforming structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions. For the purposes of this subsection, the term “reconstruction” shall mean the rebuilding after catastrophe or the rebuilding after demolition of the building.”

In this instance, BAE is proposing to demolish the existing office, flight school and operations building and construct a new building within the same footprint and having the same height and area as the existing building. Section 5.7 does not specify that demolition and reconstruction of a non-conforming structure is available only in connection with a conforming use. Although the use of a property for which site plan approval is requested is, in my opinion, a valid consideration in reviewing the site plan application, the question of the extent of the applicability of section 5.7 to BAE’s proposal is not, in my view, a determination that the Planning Board is required to make in connection with the site plan application. That issue will

be part of the demolition and building permit application process if site plan approval is granted. For reference, though, it should be noted that a 2017 special permit decision of the Zoning Board of Appeals (Decision No. 867-16), on an application to build a deck at the rear of the existing office building, stated: “The Board unanimously agreed that the Airport was a legal pre-existing nonconforming property.”

805707/GRBA/0001



300 foot Abutters List Report

Great Barrington, MA
December 27, 2022

Subject Property:

Parcel Number: 31-67-0
CAMA Number: 31-67-0
Property Address: 70 EGREMONT PLAIN RD

Mailing Address: BERKSHIRE AVIATION ENTERPRISES
P O BOX 179
GT BARRINGTON, MA 01230-0179

Abutters:

Parcel Number: 30-1-0
CAMA Number: 30-1-0
Property Address: 75 EGREMONT PLAIN RD

Mailing Address: TOLLNER RICHARD & CONNIE
75 SALISBURY AVE
GARDEN CITY, NY 11530-3940

Parcel Number: 30-2-A
CAMA Number: 30-2-A
Property Address: 81 EGREMONT PLAIN RD

Mailing Address: SHAPIRO HILDA BANKS
81 EGREMONT PLAIN RD
GT BARRINGTON, MA 01230-1732

Parcel Number: 30-2-C
CAMA Number: 30-2-C
Property Address: 77 EGREMONT PLAIN RD

Mailing Address: SHAPIRO JONATHAN
P O BOX 283
GT BARRINGTON, MA 01230-0283

Parcel Number: 30-4-0
CAMA Number: 30-4-0
Property Address: EGREMONT PLAIN RD

Mailing Address: WHEELBARROW HILL FARM LLC
99 PARK AVE SUITE 2200
NEW YORK, NY 10016-1601

Parcel Number: 31-40-0
CAMA Number: 31-40-0
Property Address: 20 WEST PLAIN RD

Mailing Address: COONS VICKI J & ROBERT COONS
WEST PLAIN RD FARM NOMINEE TRU
20 WEST PLAIN RD
GT BARRINGTON, MA 01230-1573

Parcel Number: 31-47-A
CAMA Number: 31-47-A
Property Address: 35 WEST PLAIN RD

Mailing Address: GREAT BARRINGTON RUDOLF STEINE
SCHOOL INC
35 WEST PLAIN RD
GT BARRINGTON, MA 01230-1573

Parcel Number: 31-47-F
CAMA Number: 31-47-F
Property Address: 43 WEST PLAIN RD

Mailing Address: HANKIN JONATHAN B ZHEUTLIN
BARBARA
43 WEST PLAIN RD
GT BARRINGTON, MA 01230-1573

Parcel Number: 31-49-0
CAMA Number: 31-49-0
Property Address: SEEKONK CROSS RD

Mailing Address: BERKSHIRE AVIATION ENTERPRISES
P O BOX 179
GT BARRINGTON, MA 01230-0179

Parcel Number: 31-50-0
CAMA Number: 31-50-0
Property Address: SEEKONK CROSS RD

Mailing Address: COONS ROBERT A
20 WEST PLAIN RD
GT BARRINGTON, MA 01230-1573

Parcel Number: 31-51-0
CAMA Number: 31-51-0
Property Address: 95 SEEKONK CROSS RD

Mailing Address: SHERON JOANNE L
95 SEEKONK CROSS RD
GT BARRINGTON, MA 01230-1565



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12/27/2022

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Page 1 of 3



300 foot Abutters List Report

Great Barrington, MA
December 27, 2022

Parcel Number: 31-51-A CAMA Number: 31-51-A Property Address: 91 SEEKONK CROSS RD	Mailing Address: SILBER MARCI (IND) SHAPIRO ALAN TRUSTEE 40 ANNANDALE DR CHAPPAQUA, NY 10515-1812
Parcel Number: 31-51-B CAMA Number: 31-51-B Property Address: SEEKONK CROSS RD	Mailing Address: SILBERT MARCI (IND) SHAPIRO ALAN TRUSTEE 40 ANNANDALE DR CHAPPAQUA, NY 10514-1812
Parcel Number: 31-51-C CAMA Number: 31-51-C Property Address: SEEKONK CROSS RD	Mailing Address: SILBERT MARCI (IND) SHAPIRO ALAN TRUSTEE 40 ANNANDALE DR CHAPPAQUA, NY 10514-1812
Parcel Number: 31-51-D CAMA Number: 31-51-D Property Address: SEEKONK CROSS RD	Mailing Address: SILBERT MARCI (IND) SHAPIRO ALAN TRUSTEE 40 ANNANDALE DR CHAPPAQUA, NY 10514-1812
Parcel Number: 31-63-0 CAMA Number: 31-63-0 Property Address: 99 SEEKONK CROSS RD	Mailing Address: HAMER HOLLY 99 SEEKONK CROSS RD GT BARRINGTON, MA 01230-1565
Parcel Number: 31-64-0 CAMA Number: 31-64-0 Property Address: 101 SEEKONK CROSS RD	Mailing Address: SHAW BRIAN A 384 LIME KILN RD GT BARRINGTON, MA 01230-9111
Parcel Number: 31-65-0 CAMA Number: 31-65-0 Property Address: 103 SEEKONK CROSS RD	Mailing Address: WESTERLING KARA TRUSTEE SEEKONK CROSS NOMINEE TR 900 HIGH ST DEDHAM, MA 02026-4114
Parcel Number: 31-66-0 CAMA Number: 31-66-0 Property Address: 109 SEEKONK CROSS RD	Mailing Address: MUSAYEV ALEXANDER BOLAND RANA JOY 109 SEEKONK CROSS RD GT BARRINGTON, MA 01230-1572
Parcel Number: 31-68-0 CAMA Number: 31-68-0 Property Address: 80 EGREMONT PLAIN RD	Mailing Address: SILVER STANLEY M GLASSMAN MELISSA S 80 EGREMONT PLAIN RD GT BARRINGTON, MA 01230-1551
Parcel Number: 31-68-A CAMA Number: 31-68-A Property Address: 78 EGREMONT PLAIN RD	Mailing Address: SHAPIRO CLAUDIA J PO BOX 112 SOUTH EGREMONT, MA 01258-0112
Parcel Number: 31-72-0 CAMA Number: 31-72-0 Property Address: 76 EGREMONT PLAIN RD	Mailing Address: KASS STEPHEN R & LUCIE M 425 EAST 79TH ST #3N NEW YORK, NY 10075-1005
Parcel Number: 31-73-0 CAMA Number: 31-73-0 Property Address: 54 EGREMONT PLAIN RD	Mailing Address: ISRAEL LANA TRUSTEE LANA ISRAEL REVOCABLE TRUST-20 54 EGREMONT PLAIN RD GT BARRINGTON, MA 01230-1691



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300 foot Abutters List Report

Great Barrington, MA
December 27, 2022

Parcel Number: 31-75-0
CAMA Number: 31-75-0
Property Address: 48 EGREMONT PLAIN RD

Mailing Address: PARRISH ROBERT E
PO BOX 742
GT BARRINGTON, MA 01230-0742

Parcel Number: 31-76-0
CAMA Number: 31-76-0
Property Address: SEEKONK CROSS RD

Mailing Address: BERKSHIRE AVIATION ENTERPRISES
P O BOX 179
GT BARRINGTON, MA 01230-0179

Parcel Number: 31-77-0
CAMA Number: 31-77-0
Property Address: SEEKONK CROSS RD

Mailing Address: BERKSHIRE AVIATION ENTERPRISES
P O BOX 179
GT BARRINGTON, MA 01230-0179

Parcel Number: 31-78-0
CAMA Number: 31-78-0
Property Address: SEEKONK CROSS RD

Mailing Address: BERKSHIRE AVIATION HOLDINGS IN
PO BOX 179
GT BARRINGTON, MA 01230-0179



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Page 3 of 3

Shepley Evans
Conservation Agent

E-mail: conservation@townofgb.org
www.townofgb.org



Town Hall, 334 Main Street
Great Barrington, MA 01230

Telephone: (413) 528-1619 ext. 122
Fax: (413) 528-2290

TOWN OF GREAT BARRINGTON MASSACHUSETTS

CONSERVATION COMMISSION

January 31, 2023

The Selectboard
Town of Great Barrington
334 Main Street
Great Barrington, MA 01230

Re: SPECIAL PERMIT # 932-23

Application of Berkshire Aviation Enterprises, Inc. to permit
an airport at 70 Egremont Plain Road, Great Barrington.

Having reviewed Town maps and the Mass Geographic Information System, and having conducted a brief site visit at 70 Egremont Plain Road, it has been determined that the Conservation Commission has no jurisdictional issue with the use of the subject airport property as currently constituted.

Respectfully,

A handwritten signature in blue ink, appearing to read 'S. Evans', is written over a horizontal line.

Shepley W. Evans
Conservation Agent

CC: Kate VanOlst
Chris Rembold

February 10, 2023

Selectboard
Town Hall 334 Main Street
Great Barrington, MA 01230

Re: Special Permit: 932-23
70 Egremont Plain Road

Dear Members of the Selectboard:

At its meeting of January 26, 2023 the Planning Board voted to send a positive recommendation on the special permit application for the airport use at 70 Egremont Plain Road with the comment that the Selectboard review and work with Town Counsel regarding the application of Section 7.2.

Thank you for your consideration of this recommendation.

Sincerely,

Kimberly L. Shaw

Kimberly L. Shaw
Planning Board Secretary

Cc: Chris Rembold, Assistant Town Manager/Director of Planning and Community
Development

February 17, 2023

Special Permit #932-23: Special Permit application from Berkshire Aviation Enterprises, Inc. for an aviation field in an R4 Zone at 70 Egremont Plain Road, Great Barrington, in accordance with sections 3.1.4 E(1), 7.2 and 10.4 of the Great Barrington Zoning Bylaw.

Dear Selectboard,

The Board of Health reviewed this special permit application at the February 9th meeting. Berkshire Aviation Enterprises Attorney, Denis Egan was present to answer questions and one attendee spoke in favor of passing on a positive recommendation to the Selectboard.

Motion: Peter Stanton moved to pass the special permit along to the Selectboard with the following recommendations;

- 1.) To consider MA DEP Source Water Assessment & Protection Program where the airport was listed. (attached).
- 2.) To consider light and noise pollution
- 3.) To require the Airport to continuously monitor for environmental health hazards related to the aquifer.

Second: Dr. Ruby Chang

Vote: 3-0

Sincerely,
Rebecca Jurczyk
GB BOH Agent



Massachusetts Department of Environmental Protection
Source Water Assessment and Protection (SWAP) Report
for
Great Barrington Fire District

What is SWAP?

The Source Water Assessment and Protection (SWAP) program, established under the federal Safe Drinking Water Act, requires every state to:

- inventory land uses within the recharge areas of all public water supply sources;
- assess the susceptibility of drinking water sources to contamination from these land uses; and
- publicize the results to provide support for improved protection.

Susceptibility and Water Quality

Susceptibility is a measure of a water supply's potential to become contaminated due to land uses and activities within its recharge area.

A source's susceptibility to contamination does *not* imply poor water quality.

Water suppliers protect drinking water by monitoring for more than 100 chemicals, disinfecting, filtering, or treating water supplies, and using source protection measures to ensure that safe water is delivered to the tap.

Actual water quality is best reflected by the results of regular water tests. To learn more about your water quality, refer to your water supplier's annual Consumer Confidence Reports.

Table 1: Public Water System Information

<i>PWS Name</i>	Great Barrington Fire District
<i>PWS Address</i>	20 Castle Street
<i>City/Town</i>	Great Barrington
<i>PWS ID Number</i>	1113000
<i>Local Contact</i>	Mr. Michael Vincent
<i>Phone Number</i>	413-528-0133

Introduction

We are all concerned about the quality of the water we drink. Drinking water wells may be threatened by many potential contaminant sources, including storm runoff, road salting, and improper disposal of hazardous materials. Citizens and local officials can work together to better protect these drinking water sources.

Purpose of this report:

This report is a planning tool to support local and state efforts to improve water supply protection. By identifying land uses within water supply protection areas that may be potential sources of contamination, the assessment helps focus protection efforts on appropriate best management practices (BMPs) and drinking water source protection measures.

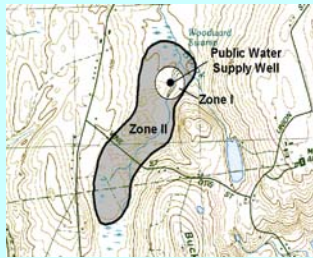
Refer to Table 3 for Recommendations to address potential sources of contamination. Department of Environmental Protection (DEP) staff are available to provide information about funding and other resources that may be available to your community.

This report includes the following sections:

1. Description of the Water System
2. Land Uses within Protection Areas
3. Source Water Protection Conclusions and Recommendations
4. Appendices

What is a Protection Area?

A well's water supply protection area is the land around the well where protection activities should be focused. Each well has a Zone I protective radius and a Zone II protection area.



Glossary

Aquifer: An underground water-bearing layer of permeable material that will yield water in a usable quantity to a well.

Hydrogeologic Barrier: An underground layer of impermeable material (i.e. clay) that resists penetration by water.

Recharge Area: The surface area that contributes water to a well.

Zone I: The area closest to a well; a 100 to 400 foot radius proportional to the well's pumping rate. This area should be owned or controlled by the water supplier and limited to water supply activities.

Zone II: The primary recharge area for the aquifer. This area is defined by hydrogeologic studies that must be approved by DEP. Refer to the attached map to determine the land within your Zone II.

Section 1: Description of the Water System

Zone II #: 472

Susceptibility: High

Well Names	Source IDs
Well #1	1113000-01G

Great Barrington is a mid-size rural community in southwestern Massachusetts. The Town is located within the Housatonic River Valley in the heart of the Berkshires. The Great Barrington Fire District supplies water to some parts of the town of Great Barrington. The District owns and operates one groundwater source (1113000-01G), the main supply, and one surface water source (1113000-01S) that is designated for emergency use only. This report does not address the emergency, surface water supply. The groundwater source is an infiltration gallery located off of Hurlburt Road about 130 feet from the Green River. The infiltration gallery is a concrete chamber 226-feet in length, 4 feet wide with a gravel pack outside of the gallery. The water level in the Green River is somewhat controlled by a stone dam approximately 500 feet downstream of the gallery. The aquifer is a shallow sand and gravel aquifer along the Green River with no evidence of a confining clay unit in the vicinity of the source. The aquifer is therefore, considered highly vulnerable to contamination due to the absence of hydrogeologic barriers (i.e. clay) that can prevent contaminant migration from the ground surface.

The Zone I for the "well" is an oval protection area, 250 radial feet from the outside edges of the infiltration gallery. The Zone II was delineated through the SWAP program utilizing empirical data gathered from an extended duration pumping test, geological mapping and analytical modeling. Please refer to the attached map to view the boundaries of the Zone II.

Water from the source is chlorinated prior to distribution. For current information on monitoring results and treatment, please refer questions to the Public Water System contact person listed above in Table 1 for a copy of the most recent Consumer Confidence Report.

Section 2: Land Uses in the Protection Areas

The Zone II for Great Barrington Fire District is a mixture of residential, agricultural, and forested land uses (refer to attached map for details). Land uses and activities that are potential sources of contamination are listed in Table 2, with further detail provided in the Table of Regulated Facilities and Table of Underground Storage Tanks in Appendix B.

Key Land Uses and Protection Issues include:

1. Non-conforming Zone I
2. Residential land uses
3. Transportation corridors
4. Hazardous materials storage and use
5. Oil or hazardous material contamination sites
6. Agricultural activities
7. Comprehensive wellhead protection planning

The overall ranking of susceptibility to contamination for the system is high,

based on the presence of at least one high threat land use within the water supply protection areas, as seen in Table 2.

1. Non-conforming Zone I – The Zone I for the infiltration gallery is an oval shaped area with a radial distance of 250 feet from the edges of the gallery. An active corn/hay field, the District’s motor control, chemical feed and storage buildings are all located within the Zone I of the source. Massachusetts drinking water regulation (310 CMR 22.00 Drinking Water) requires public water suppliers to own the Zone I, or control the Zone I through a conservation restriction. Although only water supply activities are allowed by regulation in the Zone I, many public water supplies were developed prior to the Department’s regulation and contain non water supply activities such as homes, agriculture and public roads. The District does not have legal control over the activities within Zone I but does have a verbal agreement with the land owner to not utilize fertilizers or pesticides within the Zone I area.

Zone I Recommendations:

- ✓ Enter into Right-of-First Refusal or a Memorandum of Understanding agreement with the owner or purchase conservation restrictions to protect the area from development and land uses that may threaten the water supply. Agreement Options - Until land or funding is available for outright land purchase, attempt to obtain a Memorandum of Understanding or a Right of First Refusal. A Memorandum of Understanding (MOU) is an agreement between the landowner and public water supplier in which the landowner agrees not to engage in specific threatening activities. The MOU should be specific to the land use or activity. For instance, if the land is residential with a septic system the owner could agree not to place chemicals, petroleum products, or other hazardous or toxic substances, including septic system cleaners, into the septic system, and agree that the system will be pumped at a specific frequency. Understanding how an activity threatens drinking water quality is an important component of developing an effective MOU.

A Right of First Refusal is a legal document that gives the water supplier the first chance to purchase land when it becomes available. Refer to the information about a Right of First Refusal in the Appendices.

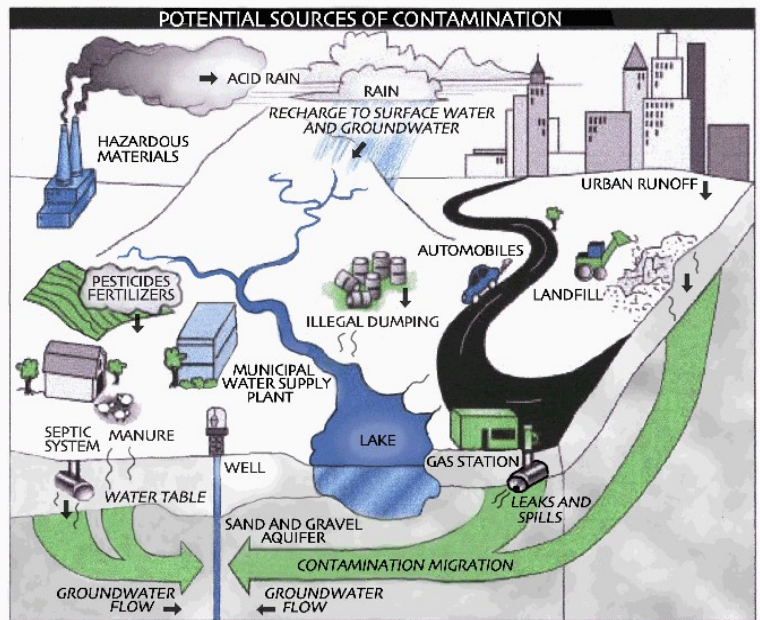
- ✓ To the extent possible, remove all non-water supply activities from the Zone I to comply with DEP’s Zone I requirements.
- ✓ Use BMPs for the storage, use, and disposal of hazardous materials such as water supply chemicals and maintenance chemicals.
- ✓ Do not use or store pesticides, fertilizers or road salt within the Zone I.
- ✓ Keep any new non-water supply activities out of the Zone I.
- ✓ Contact the property owner to be sure they are aware they are within the Zone I and Zone II of the well. Provide

Benefits of Source Protection

Source Protection helps protect public health and is also good for fiscal fitness:

- Protects drinking water quality at the source
- Reduces monitoring costs through the DEP Waiver Program
- Treatment can be reduced or avoided entirely, saving treatment costs
- Prevents costly contamination clean-up
- Preventing contamination saves costs on water purchases, and expensive new source development

Contact your regional DEP office for more information on Source Protection and the Waiver Program.



Modified from © 2000 The Groundwater Foundation. Illustrated by C. Mansfield, The Groundwater Foundation

information about BMPs and monitor for compliance with the agreement to not use pesticides and fertilizers.

2. Residential Land Uses – Approximately 12% of the Zone II consists of residential areas. That area does not have public sewers therefore, all residential areas within the Zone II utilize septic systems. If managed improperly, activities associated with residential areas can contribute to drinking water contamination. Common potential sources of contamination include:

- **Septic Systems** – Improper disposal of household hazardous chemicals to septic systems is a potential source of contamination to the groundwater because septic systems lead to the ground. If septic systems fail or are not properly maintained they can be a potential source of microbial contamination.
- **Household Hazardous Materials** - Hazardous materials may include automotive wastes, paints, solvents, pesticides, fertilizers, and other substances. Improper use, storage, and disposal of chemical products used in homes are potential sources of contamination.
- **Heating Oil Storage** - If managed improperly, Underground and Aboveground Storage Tanks (UST and AST) can be potential sources of contamination due to leaks or spills of the fuel oil they store.
- **Stormwater** – Catch basins and drainage swales transport stormwater from roadways and adjacent properties to the ground. As flowing stormwater travels, it picks up debris and contaminants from streets and lawns. Common potential contaminants include lawn chemicals, pet waste, and contaminants from automotive leaks, maintenance, washing, or accidents.

Residential Land Use Recommendations:

- ✓ Educate residents on best management practices (BMPs) for protecting water supplies. Distribute the fact sheet “Residents Protect Drinking Water” available in Appendix A and on www.mass.gov/dep/brp/dws/protect.htm, which provides BMPs for common residential issues.
- ✓ Work with Planning Boards and Boards of Health in Great Barrington and Egremont to manage new residential developments in the water supply protection areas. Work with the community to foster support and protection for the recharge areas.
- ✓ Promote BMPs for stormwater management and pollution controls.

3. Transportation Corridors - Route 71 runs through the Zone II just south of the well and local roads are common throughout the Zone II. Roadway construction, maintenance, and typical highway use can all be potential sources of contamination. Accidents can lead to spills of gasoline and other potentially dangerous transported chemicals. Roadways are frequent sites for illegal dumping of hazardous or other potentially harmful wastes. De-icing salt, automotive chemicals and other debris on roads are picked up by stormwater and wash in to catchbasins.

(Continued on page 6)

What are "BMPs?"

Best Management Practices (BMPs) are measures that are used to protect and improve surface water and groundwater quality. BMPs can be structural, such as oil & grease trap catch basins, nonstructural, such as hazardous waste collection days or managerial, such as employee training on proper disposal procedures.

For More Information

Contact Catherine V. Skiba in DEP's Springfield Office at (413) 755-2119 for more information and assistance on improving current protection measures.

Copies of this report have been provided to the public water supplier, board of health, and the town.

Source Protection Decreases Risk

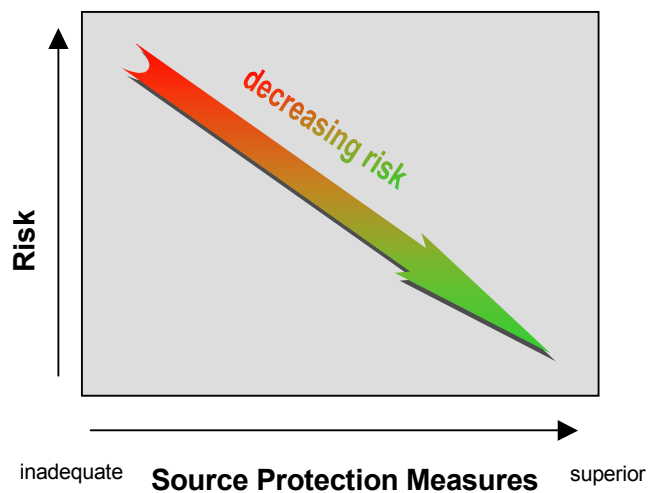


Figure 2: Risk of contamination decreases as source protection increases. This is true for public water systems of any susceptibility ranking, whether High, Moderate, or Low.

Potential Source of Contamination vs. Actual Contamination

The activities listed in Table 2 are those that typically use, produce, or store contaminants of concern, which, if managed improperly, are potential sources of contamination (PSC).

It is important to understand that a release may never occur from the potential source of contamination provided facilities are using best management practices (BMPs). If BMPs are in place, the actual risk may be lower than the threat ranking identified in Table 2. Many potential sources of contamination are regulated at the federal, state and/or local levels, to further reduce the risk.

Table 2: Land Use in the Protection Areas (Zones I and II)

For more information, refer to Appendix B: Regulated Facilities within the Water Supply Protection Area

Land Uses	Quantity	Threat	Potential Contaminant Sources*
Agricultural			
Dairy Farms	2	M	Manure (microbial contaminants), pesticides: equipment improper handling
Livestock Operations	1	M	Manure (microbial contaminants), pesticides: equipment improper handling. Numerous small hobby farmers.
Manure Storage or Spreading	2	H	Manure (microbial contaminants), pesticides: equipment improper handling
Fertilizer and Pesticide use	Numerous	H	Cropland uses. Over application. None applied within Zone I area.
Commercial			
Airports	1	H	Fuels, de-icers, salt, and other hazardous chemicals: spills, leaks, or improper handling
Body Shops	1	H	Vehicle paints, solvents, and primer products: improper management
Service Stations/ Auto Repair Shops	2	H	Automotive fluids and solvents: spills, leaks, or improper handling
Cemeteries	2	M	Over-application of pesticides: leaks, spills, improper handling; historic embalming fluids
Furniture Stripping and Refinishing	1	H	Hazardous chemicals: spills, leaks, or improper handling
Medical Facilities	1	M	Biological, chemical, and radioactive wastes: spills, leaks, or improper handling or storage
Paint Shops	1	H	Paints, solvents, other chemicals: spills, leaks, or improper handling or storage
Sand And Gravel Mining/Washing	2	M	Heavy equipment, fuel storage, clandestine dumping: spills or leaks. Numerous small operations throughout Zone II.
Residential			
Fuel Oil Storage (at residences)	Numerous	M	Fuel oil: spills, leaks, or improper handling

Activities	Quantity	Threat*	Potential Source of Contamination
Residential			
Septic Systems / Cesspools	Numerous	M	Hazardous chemicals: microbial contaminants, and improper disposal
Lawn Care / Gardening	Numerous	M	Pesticides: over-application or improper storage and disposal
Miscellaneous			
Aboveground Storage Tanks	Numerous	M	Materials stored in tanks: spills, leaks, or improper handling
Fishing/Boating	River	L	Microbial contaminants, trash
Road and Maintenance Depots	1	M	Deicing materials, automotive fluids, fuel storage, and other chemicals: spills, leaks, or improper handling or storage
Schools, Colleges, and Universities	2	M	Fuel oil, laboratory, art, photographic, machine shop, and other chemicals: spills, leaks, or improper handling or storage
Small quantity hazardous waste generators	1	M	Hazardous materials and waste: spills, leaks, or improper handling or storage
Transportation Corridors	Numerous	M	Fuels and other hazardous materials: accidental leaks or spills; pesticides: over-application or improper handling
Underground Storage Tanks	12 (Possibly more)	H	Stored materials: spills, leaks, or improper handling
Very Small Quantity Hazardous Waste	3	L	Hazardous materials and waste: spills, leaks, or improper handling or storage
Waste Transfer/ Recycling Station	1	M	Water contacting waste materials: improper management, seepage, and runoff
Notes:			
<ol style="list-style-type: none"> When specific potential contaminants are not known, typical potential contaminants or activities for that type of land use are listed. Facilities within the watershed may not contain all of these potential contaminant sources, may contain other potential contaminant sources, or may use Best Management Practices to prevent contaminants from reaching drinking water supplies. For more information on regulated facilities, refer to Appendix B: Regulated Facilities within the Water Supply Protection Area information about these potential sources of contamination. For information about Oil or Hazardous Materials Sites in your protection areas, refer to Appendix C: Tier Classified Oil and/ or Hazardous Material Sites. <p>* THREAT RANKING - The rankings (high, moderate or low) represent the relative threat of each land use compared to other PSCs. The ranking of a particular PSC is based on a number of factors, including: the type and quantity of chemicals typically used or generated by the PSC; the characteristics of the contaminants (such as toxicity, environmental fate and transport); and the behavior and mobility of the pollutants in soils and groundwater.</p>			

Transportation Corridor Recommendations:

- ✓ Identify stormwater drains and the drainage system along transportation corridors. Where applicable, contact the state or local highway departments to request that drains discharge stormwater outside of the Zone II.
- ✓ Consult with the Town and State to have catch basins inspected, maintained, and cleaned on a regular schedule. Street sweeping reduces the amount of potential contaminants in runoff.
- ✓ Continue working with local emergency response teams to ensure that any spills within the Zone II can be effectively contained.

- ✓ If storm drainage maps are available, review the maps with emergency response teams. If maps aren't yet available, work with town officials to investigate mapping options such as the upcoming Phase II Stormwater Rule requiring some communities to complete stormwater mapping.
- ✓ Work with local officials during their review of the right of way Yearly Operating Plans to ensure that water supplies are protected during vegetation control. Notify City and town officials of potential USDA funding for mitigation and prevention of runoff pollution through the Environmental Quality Incentives Program (EQIP).
- ✓ Notify community officials of potential USDA funding for mitigation and prevention of runoff pollution through the Environmental Quality Incentives Program (EQIP). The USDA web site is www.ruraldev.usda.gov or call Bruce Philbrick, at the local office in Pittsfield office at 413-443-6867 (his e-mail address is bruce.philbrick@mapittsfiie.fsc.usda.gov). Review the fact sheet available on line and call the local office of the NRCS for assistance <http://www.nrcs.usda.gov/programs/farmland/2002/pdf/EQIPFct.pdf>.
- ✓ Visit DEP's Nonpoint Source Pollution web site for additional information and assistance at <http://www.state.ma.us/dep/brp/wm/nonpoint.htm>.

4. Hazardous Materials Storage and Use – Less than one percent of the land area within the Zone II is commercial or industrial land uses. Many businesses and industries, including small businesses, use hazardous materials, produce hazardous waste products, and/or store large quantities of hazardous materials in USTs/ASTs. If hazardous materials are improperly stored, used, or disposed, they become potential sources of contamination. Hazardous materials should never be disposed of to a septic system or floor drain leading directly to the ground. The airport is of the greatest concern in the Great Barrington Fire District Zone II, with a high potential for leaks of hazardous materials such as jet fuel. Also there are a few facilities such as auto body shops, furniture strippers, a sawmill and gravel mining operations that may utilize hazardous materials and are currently not registered.

Hazardous Materials Storage and Use Recommendations:

- ✓ Work with planning agencies and/or communities to educate local small

businesses on best management practices for protecting water supplies. Distribute the fact sheet "Businesses Protect Drinking Water" available in Appendix A and on www.mass.gov/dep/brp/dws/protect.htm, which provides BMP's for common business issues.

- ✓ Work with local Boards of Health and businesses to register those facilities that are unregistered generators of hazardous waste or waste oil. Partnerships between businesses, water suppliers, and communities enhance successful public drinking water protection practices.
- ✓ Work with local Boards of Health and businesses to review Massachusetts floordrain requirements. Refer to the brochure "Industrial Floor Drains" for more information and request Floor Drain regulations if they do not exist.

5. Presence of Oil or Hazardous Material Contamination Sites – The Zone II or areas immediately adjacent to the Zone II contain a DEP Tier Classified Oil and/or Hazardous Material Release Site indicated on the map as Release Tracking Numbers 1-0014368. Refer to Appendix 3 for more information.

Oil or Hazardous Material Contamination Sites Recommendation:

- ✓ Monitor progress on any ongoing remedial action conducted for the known oil or contamination site.

6. Agricultural Activities – There are several farms within the Zone II, including dairy farms, hay, vegetable, fruit and corn fields. Pesticides and

Top 5 Reasons to Develop a Local Wellhead Protection Plan

- ➊ Reduces Risk to Human Health
- ➋ Cost Effective! Reduces or Eliminates Costs Associated With:
 - ◆ Increased groundwater monitoring and treatment
 - ◆ Water supply clean up and remediation
 - ◆ Replacing a water supply
 - ◆ Purchasing water
- ➌ Supports municipal bylaws, making them less likely to be challenged
- ➍ Ensures clean drinking water supplies for future generations
- ➎ Enhances real estate values - clean drinking water is a local amenity. A community known for its great drinking water in a place people want to live and businesses want to locate.



fertilizers have the potential to contaminate a drinking water source if improperly stored, applied, or disposed. If not contained or applied properly, animal waste from barnyards, manure pits and field application are potential sources of contamination to ground and surface water.

Agricultural Activities Recommendation:

- ✓ Continue to work with farmers in your protection areas to make them aware of your water supply and to encourage the use of a US Natural Resources Conservation Service Farm Plan. They should also be aware of the Department of Food & Agriculture’s regulation regarding the use of certain types of pesticides within a Zone II groundwater supply protection areas.
- ✓ Provide information to hobby farmers regarding Best Management Practices. Refer them to <http://www.state.ma.us/dep/brp/dws/protect.htm> for BMPs.
- ✓ Provide information about potential USDA funding for mitigation and prevention of runoff pollution through the Environmental Quality Incentives Program (EQIP). The USDA web site is www.ruraldev.usda.gov or call Bruce Philbrick, at the local office in Pittsfield office at 413-443-6867 (his e-mail address is bruce.philbrick@mapittsfi.fsc.usda.gov). Review the fact sheet available online and call the local office of the NRCS for assistance <http://www.nrcs.usda.gov/programs/farmland/2002/pdf/EQIPFct.pdf>.
- ✓ Visit DEP’s Nonpoint Source Pollution web site for additional information and assistance at <http://www.state.ma.us/dep/brp/wm/nonpoint.htm>.

7. Protection Planning – Currently, the Towns of Egremont and Great Barrington do not have water supply protection controls that meet DEP’s Wellhead Protection regulations 310 CMR 22.21(2). However, the District maintains communication with all host communities for the Zone II and Zone III areas. Protection planning protects drinking water by managing the land area that supplies water to a well. A Wellhead Protection Plan coordinates community efforts, identifies protection strategies, establishes a timeframe for implementation, and provides a forum for public participation. There are resources available to help communities develop a plan for protecting drinking water supply wells.

Protection Planning Recommendations:

- ✓ Develop a Wellhead Protection Plan. Establish a protection team that includes the various water suppliers in Great Barrington and Sheffield’s Water Company, and refer them to <http://mass.gov/dep/brp/dws/protect.htm> for a copy of DEP’s guidance, “Developing a Local Wellhead Protection Plan”. Work with the town Boards to develop comprehensive water supply protection and planning.
- ✓ Work with the Sheffield Water Company to coordinate protection measures for one another’s communities. Include Egremont in the planning process to gain support for comprehensive protection of resources. Please refer to the enclosed map for areas of overlapping Zone IIs.
- ✓ Coordinate efforts with local officials to compare local wellhead protection controls with current MA Wellhead Protection Regulations 310 CMR 22.21 (2). Encourage adoption of controls that minimally meet 310 CMR 22.21(2). For more information on DEP land use controls see <http://mass.gov/dep/brp/dws/protect.htm>.
- ✓ Request that the Boards of Health adopt floordrain controls that meet 310 CMR 22.21(2).

Other land uses and activities within the Zone II that are potential sources of contamination are included in Table 2. Refer to Appendix B for more information about these land uses. Identifying potential sources of contamination is an important initial step in protecting your drinking water sources. Further local investigation will provide more in-depth information and may identify new land uses and activities that are potential sources of contamination. Once potential

What is a Zone III?

A Zone III (the secondary recharge area) is the land beyond the Zone II from which surface and ground water drain to the Zone II and is often coincident with a watershed boundary.

The Zone III is defined as a secondary recharge area for one or both of the following reasons:

1. The low permeability of underground water bearing materials in this area significantly reduces the rate of groundwater and potential contaminant flow into the Zone II.
2. The groundwater in this area discharges to a surface water feature such as a river, rather than discharging directly into the aquifer.

The land uses within the Zone III are assessed only for sources that are shown to be groundwater under the direct influence of surface water.

Additional Documents:

To help with source protection efforts, more information is available by request or online at mass.gov/dep/brp/dws including:

1. Water Supply Protection Guidance Materials such as model regulations, Best Management Practice information, and general water supply protection information.
2. MA DEP SWAP Strategy
3. Land Use Pollution Potential Matrix
4. Draft Land/Associated Contaminants Matrix

sources of contamination are identified, specific recommendations like those below should be used to better protect your water supply.

Section 3: Source Water Protection Conclusions and Recommendations

Current Land Uses and Source Protection:

As with many water supply protection areas, the system Zone IIs contain potential sources of contamination. However, source protection measures reduce the risk of actual contamination, as illustrated in Figure 2. The water supplier is commended for taking an active role in promoting source protection measures in the Water Supply Protection Areas through:

- The acquisition of land and fostering a relationship with abutters.
- The cooperative efforts with Alford and Egremont with respect to emergency response.
- The agreements for use of land within the Zone I area and the gentlemen's agreement not to use pesticides and fertilizers. However, this type of agreement should be formalized. Refer to the first item under Source Protection recommendations below.

Source Protection Recommendations:

To better protect the sources for the future:

- ✓ Enter into Right-of-First Refusal or a Memorandum of Understanding agreement with the owner or purchase conservation restrictions to protect the area from development and land uses that may threaten the water supply. Agreement Options - Until land or funding is available for outright land purchase, attempt to obtain a Memorandum of Understanding or a Right of First Refusal. A Memorandum of Understanding (MOU) is an agreement between the landowner and public water supplier in which the landowner agrees not to engage in specific threatening activities. The MOU should be specific to the land use or activity. For instance, if the land is residential with a septic system the owner could agree not to place chemicals, petroleum products, or other hazardous or toxic substances, including septic system cleaners, into the septic system, and agree that the system will be pumped at a specific frequency. Understanding how an activity threatens drinking water quality is an important component of developing an effective MOU. A Right of First Refusal is a legal document that gives the water supplier the first chance to purchase land when it becomes available. Refer to the information about a Right of First Refusal in the Appendices.
- ✓ Inspect the Zone I regularly, and when feasible, remove any non-water supply activities.
- ✓ Educate residents on ways they can help you to protect drinking water sources.
- ✓ Continue working with emergency response teams to ensure that they are aware of the Zone II and to cooperate on responding to spills or accidents and contact you.
- ✓ Monitor progress on any ongoing remedial action conducted for the known oil or contamination site.
- ✓ Work with farmers in your protection areas to make them aware of your water supply and to encourage the use of a NRCS farm plan to protect water supplies. Work with hobby farmers to educate them and supply guidance regarding BMPs.
- ✓ Work with the community to develop and implement a Wellhead Protection Plan.

DEP staff, informational documents, and resources are available to help you build on this SWAP report as you continue to improve drinking water protection in your community. The Department's Wellhead Protection Grant Program and Source Protection Grant Program provide funds to assist public water suppliers in addressing water supply source protection through local projects. Protection recommendations discussed in this document may be eligible for funding under the Grant Program. Please note: each spring DEP posts a new Request for Response for the grant program (RFR).

Conclusions:

These recommendations are only part of your ongoing local drinking water source protection. Additional source protection recommendations are listed in Table 3, the Key Issues above and Appendix A.

➤ Partner with Local Businesses:

Since many small businesses and industries use hazardous materials and produce hazardous waste products, it is essential to educate the business community about drinking water protection. Encouraging partnerships between businesses, water suppliers, and communities will enhance successful public drinking water protection practices.

➤ **Educate Residents:**

If managed improperly, household hazardous waste, septic systems, lawn care, and pet waste can all contribute to groundwater contamination. Hazardous materials include automotive wastes, paints, solvents, pesticides, fertilizers, and other substances. If a septic system fails or is not properly maintained, and animal waste could be a potential source of microbial contamination.

➤ **Provide Outreach to the Community:**

Public education and community outreach ensure the long-term protection of drinking water supplies. Awareness often generates community cooperation and support. Residents and business owners are more likely to change their behavior if they know where the wellhead protection recharge area is located; what types of land uses and activities pose threats; and how their efforts can enhance protection.

➤ **Plan for the Future:**

One of the most effective means of protecting water supplies is local planning, include adoption of local controls to protect land use, regulations related to watersheds and ground water protection. These controls may include health ordinances/regulations, discharge prohibitions, general ordinances, and zoning by-laws that prohibit or control potential sources of contamination within the protection areas.

➤ **Other Funding Sources:**

Other grants and loans are available through the Drinking Water State Revolving Loan Fund, the Clean Water State Revolving Fund, and other sources. For more information on grants and loans, visit the Bureau of Resource Protection's Municipal Services web site at: <http://mass.gov/dep/brp/mf/mfpubs.htm>. The USDA also has various funding sources for government, non-government organizations and agricultural facilities through programs such as those listed on the USDA web site <http://search.sc.egov.usda.gov/nrcs.asp?qu=eqip&ct=NRCS>. One program in particular, the Environmental Quality Incentives Program (EQIP) may be utilized in a variety of projects from DPW stormwater management to farm nutrient management designed to protect surface and groundwater. Review the fact sheet available on line and call the local office (Pittsfield 413-443-6867) of the NRCS for assistance <http://www.nrcs.usda.gov/programs/farmland/2002/pdf/EQIPFct.pdf>. Contact Bruce W. Philbrick the District Conservationist at 413-443-6867 or e-mail at bruce.philbrick@mapittsfiie.fsc.usda.gov

The assessment and protection recommendations in this SWAP report are provided as a tool to encourage community discussion, support ongoing source protection efforts, and help set local drinking water protection priorities. Citizens and community officials should use this SWAP report to spur discussion of local drinking water protection measures. The water supplier should supplement this SWAP report with local information on potential sources of contamination and land uses. Local information should be maintained and updated periodically to reflect land use changes in the Zone II. Use this information to set priorities, target inspections, focus education efforts, and to develop a long-term drinking water source protection plan.

Section 4: Appendices

- A. Protection Recommendations
- B. Regulated Facilities within the Water Supply Protection Area
- C. Table of Tier Classified Oil and/or Hazardous Material Sites within the Water Supply Protection Areas
- D. Additional Documents on Source Protection

Table 3: Current Protection and Recommendations

Protection Measures	Status	Recommendations
Zone I		
Does the Public Water Supplier (PWS) own or control the entire Zone I?	NO	Follow Best Management Practices (BMP's) that focus on good housekeeping, spill prevention, and operational practices to reduce the use and release of hazardous materials.
Is the Zone I/Zone II area posted with appropriate signs?	YES	Additional economical signs are available from the Northeast Rural Water Association (802) 660-4988.
Is Zone I regularly inspected?	YES	Continue daily inspections of drinking water protection areas.
Are water supply-related activities the only activities within the Zone I?	YES	Continue monitoring non-water supply activities in Zone Is.
Municipal Controls (Zoning Bylaws, Health Regulations, and General Bylaws)		
Does the municipality have Wellhead Protection Controls that meet 310 CMR 22.21 (2)?	NO	Although the District has met DEP's best efforts for well-head protection, the protection area should be expanded and bylaws revised as recommended in the SWAP Zone II report. Refer to www.state.ma.us/dep/brp/dws/ for model by-laws and health regulations, and current regulations.
Do neighboring communities protect the Zone II areas extending into their communities?	NO	Work with the neighboring municipalities of Egremont and Alford to develop wellhead protection controls and include the Zone II and III in a water supply protection district.
Planning		
Does the PWS have a Wellhead Protection Plan?	NO	Develop a wellhead protection plan. Follow "Developing a Local Wellhead Protection Plan" available at: www.state.ma.us/dep/brp/dws/ . Consider working with the Sheffield Water company to develop a comprehensive wellhead protection plan in Great Barrington and Egremont.
Does the PWS have a formal "Emergency Response Plan" to deal with spills or other emergencies?	YES	Augment plan by developing a joint emergency response plan with fire department, Board of Health, DPW, and local and state emergency officials. Coordinate emergency response drills with local teams. The District already is on the "to be notified list" for all emergencies in Great Barrington and Egremont.
Does the municipality have a wellhead protection committee?	NO	Establish committee; include representatives from citizens' groups, neighboring communities, and the business community. Work with the Sheffield Water Company to promote comprehensive protection in Great Barrington and with the Towns of Egremont and Alford.
Does the Board of Health conduct inspections of commercial and industrial activities?	NO	For more guidance see "Hazardous Materials Management: A Community's Guide" at www.state.ma.us/dep/brp/dws/files/hazmat.doc
Does the PWS provide wellhead protection education?	Partial	Aim additional efforts at commercial, industrial and municipal uses within the Zone II.

1-0014368

APPENDIX B:

REGULATED FACILITIES WITHIN THE WATER SUPPLY PROTECTION AREA

DEP Permitted Facilities

DEP Facility Number	Facility Name	Street Address	Town	Permitted Activity	Activity Class	Facility Description
185822	Simons Rock Of Bard College	84 Alford Street	Great Barrington	VSQG	Hazardous Waste Generator	College
	Autobody/Repair	78 Egremont Plain Road	Great Barrington	VSQG	Hazardous Waste Generator	Autobody/Repair
	Egremont DPW* and Transfer Station*	171 Egremont Plain Road	Egremont	VSQG	Hazardous Waste Generator	DPW/Transfer Station

* Note: This facility is just outside of the Zone II.

Underground Storage Tanks:

Facility Name	Address	Town	Description	Tank Type	Tank Leak Detection	Capacity (gal)	Contents
Berkshire Aviation Enterprises	Egremont Plain Road	Great Barrington	Airport	1 Wall	Approved In Tank Monitor	20,000	Gasoline
				1 Wall	Approved In Tank Monitor	4,000	Gasoline
Agar Oil*	154 Hurlbert Road	Great Barrington	Fuel distributor	1 Wall	Approved In Tank Monitor	10,000	Kerosene
				1 Wall	Approved In Tank Monitor	10,000	Diesel

Selectboard Meeting Packet for March 13, 2023
 Item 4. a. Berkshire Aviation Enterprises Special Permit Application 932-23

				1 Wall	Approved In Tank Monitor	20,000	Fuel Oil
				1 Wall	Approved In Tank Monitor	20,000	Gasoline
				1 Wall	Approved In Tank Monitor	20,000	Gasoline
				1 Wall	Approved In Tank Monitor	20,000	Fuel Oil
				1 Wall	Approved In Tank Monitor	10,000	Diesel
				2 Wall	Approved In Tank Monitor	500	Gasoline
				2 Wall	Approved In Tank Monitor	500	Diesel
				1 Wall	Interstitial Monitoring	1,000	Fuel Oil

For more information on underground storage tanks, visit the Massachusetts Department of Fire Services web site: <http://www.state.ma.us/dfs/ust/ustHome.htm>

Note: This appendix includes only those facilities within the water supply protection area(s) that meet state reporting requirements and report to the appropriate agencies. Additional facilities may be located within the water supply protection area(s) that should be considered in local drinking water source protection planning.

* Agar Fuel Storage facilities are just outside of the Zone II area

APPENDIX C – Table of Tier Classified Oil and/or Hazardous Material Sites within the Water Supply Protection Areas

DEP’s datalayer depicting oil and/or hazardous material (OHM) sites is a statewide point data set that contains the approximate location of known sources of contamination that have been both reported and classified under Chapter 21E of the Massachusetts General Laws. Location types presented in the layer include the approximate center of the site, the center of the building on the property where the release occurred, the source of contamination, or the location of an on-site monitoring well. Although this assessment identifies OHM sites near the source of your drinking water, the risks to the source posed by each site may be different. The kind of contaminant and the local geology may have an effect on whether the site poses an actual or potential threat to the source.

The DEP’s Chapter 21E program relies on licensed site professionals (LSPs) to oversee cleanups at most sites, while the DEP’s Bureau of Waste Site Cleanup (BWSC) program retains oversight at the most serious sites. This privatized program obliges potentially responsible parties and LSPs to comply with DEP regulations (the Massachusetts Contingency Plan – MCP), which require that sites within drinking water source protection areas be cleaned up to drinking water standards.

For more information about the state’s OHM site cleanup process to which these sites are subject and how this complements the drinking water protection program, please visit the BWSC web page at <http://www.state.ma.us/dep/bwsc>. You may obtain site -specific information two ways: by using the BWSC Searchable Sites database at <http://www.state.ma.us/dep/bwsc/sitellst.htm>, or you may visit the DEP regional office and review the site file. These files contain more detailed information, including cleanup status, site history, contamination levels, maps, correspondence and investigation reports, however you must call the regional office in order to schedule an appointment to view the file.

The table below contains the list of Tier Classified oil and/or Hazardous Material Release Sites that are located within your drinking water source protection area.

Table 1: Bureau of Waste Site Cleanup Tier Classified Oil and/or Hazardous Material Release Sites (Chapter 21E Sites) - Listed by Release Tracking Number (RTN)

RTN	Release Site Address	Town	Contaminant Type
1-0014386	50 Prospect Lake Road	Egremont	Oil

For more location information, please visit the DEP website for Bureau of Waste Site Cleanup <http://www.state.ma.us/dep/bwsc/sitelist.htm>.