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To: [Kelly Fernandez - Persson & Cohen](#); [Jeffery A. Boone](#); [Annette Boone](#); [Danielle Lewis](#)
Cc: [Joshua Gadomski](#); [Herbert Lawson](#); [Richard Ulrich](#)
Subject: Revised (again) Murphy Oaks Stipulation Document
Date: Tuesday, September 24, 2019 8:12:33 AM
Attachments: [9-24-19 - Windham Ordinance Section 3 Final Revised Stipulations Clean.docx](#)
[Redline - Windham Sept 20 Stipulations to Sept 24 .docx](#)
[Redline - Windham Sept 20 Stipulations to Sept 24 .pdf](#)
Importance: High

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All:

Attached are revisions to the documents circulated yesterday that address (by incorporating in many cases) new or revised stipulation language requested by Fox Lea Farm I received yesterday afternoon from Jeff and Annie. The "Final Revised Stipulations Clean" is a clean copy, with comments and notes on those stipulations to which Windham cannot agree (updated with yesterday's language). I provided the redline in both MS Word and PDF format, as the Word redlines don't always display properly when people have different versions or settings.

I will have copies of these on a USB drive, but will not be able to bring printed copies.

Best regards,
Robert Lincoln

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Murphy Oaks Proposed Stipulations– Sept ~~2024~~ 2019

Exhibit A to Ordinance 2019-26; Reference in Section 3.

Design and Development Standards.

1. Density shall be limited to 85 single-family detached dwelling units. **[Implements Windham proffer at August 28 hearing].**
2. Lot development standards:
 - a. There shall be no permanently affixed, wired, southward-facing outdoor speakers on lots 33-52 of the revised Binding Master Concept Plan dated September 6, 2019. **[Revised from November narrative to refer to new lot numbers.]**
 - b. Maximum height of structures shall be limited to one (1) story. **[From November narrative.]**
3. Developer will submit plans for the following transportation improvements (as depicted on the Binding Master Concept Plan) concurrent with preliminary plat and construction plan approval, and shall construct the improvements, subject to approval from Sarasota County for improvements in County right-of-way, prior to the issuance of the first certificate of occupancy:
 - a. Eastbound to Southbound right turn lane from Edmondson Road to Auburn Road. If construction of the eastbound to southbound right hand turn lane impacts the existing multi-use path on the south side of Edmondson Road, Developer will restore the multi-use path to existing conditions
 - b. Right and left hand turn lanes from Auburn to Edmonson; Developer will incorporate on-road bicycle lane(s).
 - c. The left hand turn lane from Auburn into the project. Installation of the left hand turn lane shall not impede on-road bicycle lanes or sidewalks. **[Implements Windham proffer for settlement].**
4. There shall be no vehicular or pedestrian access connecting the subdivision to Fox Lea Drive. **[From November narrative.]**
5. No storm water or other drainage from the developed portion, non-buffer areas, of the subdivision site shall be discharged into the existing ditch that runs east-west within the northern portion of the Fox Lea Drive right-of-way. **[From November narrative.]**
6. The Master Surface Water Management Plan shall be consistent with the Curry Creek Basin Master Plans. **[From November narrative.]**
7. Landscape and Buffer Standards/Landscape Plan. The buffers surrounding the site shall be as shown on the Landscape Plan and the Binding Master Concept Plan, consistent with the following standards (which shall govern in the case of any conflicts).
 - a. Border Road Buffer: The landscaped buffer area shall be a minimum of 45.7 feet in width measured at right angles to property lines and shall be established along the entire length of and contiguous to the designated property lines and includes a six-foot-high (6') tan PVC fence within the landscaped buffer area to cover the sides of the lots designated as 11 and 12 on the binding concept plan. The remainder of the buffer will be landscaped per the Landscape Plan.
 - b. N. Auburn Road Buffer: The landscaped buffer area shall be a minimum of 50 feet in width measured at right angles to property lines and shall be established along the

entire length of and contiguous to the designated property lines and includes a six-foot-high (6') fence, as depicted in the Landscape Plan, within the fifty-foot-wide landscaped buffer area. The 6' fence will be buffered from the public ROW by a continuous hedge to block the public from the fence. The hedge will continue along the north boundary of the property as depicted on the Landscape Plan. Existing vegetation within this buffer will be maintained as much as possible with exotics being removed and supplemented with plantings per the Landscape Plan.

i. Sidewalk. The public sidewalk depicted in the Binding Master Concept Plan and Landscape Plan shall be included within the fifty (50) foot wide buffer area. The sidewalk shall meander to avoid existing preserved trees wherever possible and be included within a public access easement. The Murphy Oaks HOA shall have maintenance responsibility of the sidewalk.

ii. Opacity. The project landscaping will achieve 90% opacity when viewed from N. Auburn Road to a height to shield the view up to the soffit level within three years of the start of construction.

c. Fox Lea Drive Buffer: The landscaped buffer area shall be a minimum of forty (40) feet in width ~~measured at right angles to property lines and shall be established along the entire length of and contiguous to the designated property line and Fox Lea Drive~~, and shall include a five foot (5') berm, an eight-foot-high (8') concrete wall, a continuous hedge composed of Wax Myrtles, which will be permitted to grow naturally without trimming, and additional trees and landscaping (including canopy trees) as depicted on the Landscape Plan. Developer, its successors and assigns, shall maintain the berm, wall and landscaping per the described standards in perpetuity.

i. Existing vegetation in Fox Lea Drive ROW. Existing vegetation within in the Fox Lea Drive right-of-way adjacent to the property will be kept in its current condition to the extent practical. Any existing vegetation in the right-of-way damaged during construction by the Developer or its contractors will be replaced as follows: if the damaged vegetation is a tree subject to Sarasota County's tree ordinance, it will be replaced by the required mitigation in the same location or on the berm, as required by Sarasota County; if the damaged vegetation is not protected under Sarasota County's tree ordinance, it will be replaced behind its previously location, on the berm, consistent with the table with a species consistent with the table shown on the landscape plan. All such vegetation planted to replace damaged existing vegetation under the terms herein, shall be in addition to the landscaping shown on the landscape plan.

[Implements Windham proffer for settlement, with modifications to address Fox Lea concerns raised September 13].

d. Interstate 75 Buffer: The landscaped buffer area shall be a minimum of 120.9 feet in width measured at right angles to property lines and shall be established along the entire length of and contiguous to the designated property lines and includes a six-foot-high (6') concrete wall on top of a 7' berm. The 6' concrete wall will be buffered from the public ROW by a continuous hedge to block the public from the wall. Also, this buffer will

include additional landscaping in front of the wall and on top of the berm to further block the residence from I-75, as depicted on the Landscape Plans.

8. The Developer shall commence construction of the amenity area within twelve (12) months after issuance of the first certificate of occupancy for the first residence, or upon the closing on twenty five (25) percent of lots to the end users, whichever shall first occur. **[From November narrative.]**

Land Development, Construction Management and Staging Standards.

9. Timing of Land Development and Construction: ~~The~~ Developer shall use its best efforts to limit ~~land development~~ Horizontal construction and building roofing construction along the southern boundary on the weekends during the months of January, February, March, July, and August. **[From November narrative.]**

10. No open burning; chipping. The Developer shall not utilize open burning of land clearing material and debris during construction. As part of its land clearing permit, the developer will identify a site in the northeastern portion of the property for a wood chipper, and shall create a temporary berm at least 12' high on the south side of where the chipper is located and shall remain while the chipper is in operation. The chipper and berm will be generally located as depicted on Exhibit ~~---~~ A. **[Windham proffer to address Fox Lea concern raised at mediation, modified to address additional Fox Lea demands on August 23, including language and exhibit.**

11. Construction of southernmost berm and wall. The 5' berm along the southern boundary shall be constructed immediately after land clearing is complete. Once the 5' berm is constructed and stabilized, the 8' wall shall be constructed. No construction or land development, other than those activities necessary or ancillary to the construction of the berm and wall, shall occur until the wall and berm are in place. **[Windham proffer to address Fox Lea September 13 demand.]**

12. Construction traffic. Construction access to the site shall be from Auburn Road, and there shall be no construction entrance or construction access to the property from Fox Lea Drive. **[Windham proffer to address Fox Lea concerns raised at August 28 hearing about construction activity on Fox Lea Drive.]**

13. Right-of-way for Fox Lea Drive. Developer shall support any application by Fox Lea Farm to vacate Fox Lea Drive and shall disclaim any rights in the northern half of the street. **[Windham proffer to address Fox Lea concerns raised at August 28 hearing about construction activity on Fox Lea Drive.]**

14. Surficial Aquifer System Monitoring and Mitigation Plan. Fox Lea Farm has expressed concern that dewatering activities associated with the construction of the project's storm water management ponds could adversely affect the ability of Fox Lea Farms to maintain proper footing conditions, by increasing the need for watering the surface of the rings and leaving insufficient water in its irrigation pond or wells to provide adequate watering. The Developer's engineer has provided a study of anticipated short-term effects on ground water levels from the dewatering activities associated with construction of the project's storm water ponds that indicate any affects will be short-term and within a range that should not adversely affect Fox Lea Farms activities, wells and irrigation pond. To ensure these activities do not have an adverse effect on Fox Lea Farms' operation, the Developer will monitor and mitigate any potential impacts to Fox

Lea Farm as follows: **[Windham proffer to address Fox Lea August 23 demands and at August 28 hearing, modified to address specific issues raised by Fox Lea's engineer.]**

a. Timing. The monitoring and mitigation activities and facilities shall be in place and operating no less than two weeks prior to the commencement of site construction work on the stormwater ponds and shall remain in place for 180 days after the new ponds are constructed and filled to their design level, or until ground water levels at Fox Lea Farm have returned to their pre-construction state, whichever is later.

b. Monitoring wells and staff gauge.

i. Number and location of monitoring wells. At least one monitoring well shall be established on the subject property, south of Pond 1 (as depicted on the Binding Development Concept Plan) near the Fox Lea Drive property line. If Fox Lea Farms agrees to execute such consents and easements as may be necessary upon request by the Developer, three monitoring wells shall be established on Fox Lea Farm's property at the location previously identified by Fox Lea Farms. If Fox Lea Farm does not agree to place the proposed monitoring wells on its property, at least two other monitoring wells shall be established along the subject property's southern property line.

ii. Specification of monitoring wells. The construction of the shallow monitor wells will meet all applicable standards set by ASTM international, the Florida Department of Environmental Protection (FDEP), the Southwest Florida Water Management District (SWFWMD), and/or applicable Sarasota County regulations, respectively and if required by law. Each monitor well would extend to a depth of 15 feet below land surface (ft. BLS) and will be constructed with 10 feet (ft.) of 10 slot PVC screen (0.01-in.) and, at a minimum, approximately 7-ft. of Schedule 40 PVC well casing. The wells are proposed to be installed by direct push methodology to assure plumbness and, prior to monitoring, be developed to remove fine sediments that may have been introduced into the screens during installation. Each monitor well will have a lockable, metal protective casing extending approximately 2.5 to 3 feet above land surface (ft. ALS) and a 2-ft. by 2-ft. concrete well pad. Following well installation and development, a Florida licensed land surveyor will measure and provide elevations for: (1) ground surface at the well pad; (2) top of metal protective casing (lid down); (3) top of PVC well casing at an identifiable notch.

iii. Staff gauge. If Fox Lea Farms agrees to execute such consents and easements as may be necessary upon request by the Developer, a staff gauge shall be installed on the northern shoreline of the irrigation pond on Fox Lea Farms' property. The staff gauge will be constructed with 5 ft. of 10 slot PVC screen (0.01-in.) resting on the bottom of the pond clamped to a black steel pipe driven into the pond bottom for vertical support of the well screen. Following staff gauge installation, a Florida licensed land surveyor will measure and provide the elevation for the top of PVC well screen at an identifiable notch.

c. Monitoring equipment and monitoring. pressure transducers at each monitor well and staff gauge will be installed along with a telemetry system. This will allow for

the collection of water level data without interfering with Fox Lea Farm activities. The Diver® system by Van Essen, or a similar system, be installed for this project, to allow water level measurements to be monitored via a desktop web interface. The pressure transducers will be programmed for hourly measurements with telemetry data uploaded to the web interface every four (4) hours. Water levels will be monitored for no less than two (2) weeks prior to initiating construction dewatering and will continue until all construction dewatering activities have been terminated and the newly excavated ponds rebound back to approximate static water table conditions. Manual measurements will be made at the beginning of monitoring, during dewatering of Pond 1, and during construction dewatering of Pond 2 as a means of Quality Assurance.

d. Data collection and sharing. The Developer's engineers shall monitor, collect and save the data from the monitoring wells and staff gauge. The data and real-time access to viewing the measurements will be provided to a representative of Fox Lea Farm, to Windham, and to the site dewatering contractor. Based on the modeling evaluation completed using the SWFWMD District-Wide Regulatory Model version 3 (DWRMv3), the monitoring system cloud interface will be set-up such that notifications are sent to Fox Lea Farm, Windham the Developer, the Construction Manager, and the site dewatering contractor if drawdown approaches 0.5-ft. of the simulated drawdown at the assigned well locations, if drawdown approaches the simulated drawdown at the assigned well locations, and if the drawdown exceeds the simulated drawdown at the assigned well locations. At least weekly during pond construction, the Developer's engineers shall review and assess the data to determine whether an adverse impact to water levels at Fox Lea Farm has occurred or is likely to occur, and shall report on the conditions to the Developer and, on request, to Fox Lea Farm's representative. Additionally, precipitation data will be collected on site by the Developer provided during the weekly update submittal to Fox Lea Farm's representative.

e. Avoidance and mitigation of adverse impacts to Fox Lea Farm.

i. Adverse impact. An adverse impact is identified as the measured drawdown exceeding the simulated DWRMv3 drawdown at the agreed upon well locations and staff gauge and shall be considered corrected if the measured water levels returns to levels that would not be an adverse impact.

ii. Avoiding or mitigating adverse impacts.

1. If monitoring indicates ground water levels measured at the agreed upon monitoring well locations and/or staff gauge have dropped to within 0.5-ft. of the predicted DWRMv3 drawdown at an approved monitoring points Fox Lea Farm and Windham will be notified with that information and the site dewatering contractor will be required to be present on site.

2. If monitoring indicates ground water levels measured at the agreed upon monitoring well locations and/or staff gauge are within the predicted DWRMv3 drawdown at approved monitoring points and water levels trends indicate a continued decline the site dewatering contractor will reduce the

construction dewatering rate by 10 percent and direct construction dewatering water to the Fox Lea Drive ditch, unless already full.

3. If monitoring indicates ground water levels measured at the agreed upon monitoring well locations and/or staff gauge continue to decline below the predicted DWRMv3 drawdown at approved monitoring points, the construction dewatering contractor shall reduce the construction rate to 50 percent or a rate reduction such that the monitored water levels begin to demonstrate an increase in head while directing construction dewatering water to the Fox Lea Drive ditch, unless already full.

4. If monitoring indicates ground water levels measured at the agreed upon monitoring well locations and/or staff gauge are at levels that would constitute an adverse impact as defined above for more than eight (8) hours after first mitigation pumps will be turned off and water levels will be allowed to rebound to levels above the predicted DRWMv3 drawdown before construction dewatering is reconvened.

15. Inspection by Fox Lea Farms Farm during Land Development and Construction. Fox Lea Farms Farm may name ~~a licensed and insured professional engineer or an officer, independent contractor, or an officer or employee, or other agent~~ of Fox Lea Farm, as an authorized inspector, (the "Inspector") and identify that representative to the Developer, or the Construction Manager on-site. Fox Lea Farm's Inspector will be permitted to enter and inspect the subject property, upon reasonable notice to, and permission from, the Construction Manager, which shall not be unreasonably withheld. Excluding willful or grossly negligent action by the Developer and any contractors, Fox Lea Farms Farm and ~~its~~ the Inspector shall indemnify Developer and any contractor working on the subject property against any claims based on injury suffered by the Inspector while on the subject property prior to conducting any inspection. [Windham proffer to address Fox Lea August 23 demands and at August 28 hearing, modified to address specific issues raised include language proffered by Fox Lea on September 23.]

16. Communication and Coordination of Land Development and Construction. For purposes of protecting the safety and welfare of persons, animals, and the associated operations on Fox Lea Farm during the course of all land development and/or construction related activities, ~~To ensure that Fox Lea Farms may maintain effective communications with the contractors working on the site during construction, and that contractors are aware of the activities at Fox Lea Farm on the Murphy Oaks property,~~ the Developer shall ~~deperform~~ perform the following: [Windham proffer to address Fox Lea August 23 demands.] actions:

a. Contact information. The Developer shall provide Fox Lea Farm with the name, phone number, and email address of the representative of the contractor or engineer in charge of construction on the property (the "Construction Manager"), the phone number for the construction trailer on site, and the identity (name, license, address and company phone number) of the contractor and any major subcontractors (site work, land clearing, excavation, utilities) working on site. Fox Lea Farm shall provide the Developer and Construction Manager with the names, phone numbers, and email addresses for its agents authorized for communication.

~~b. Construction schedule information. No fewer than 30 days before the commencement of site development work, the Construction Manager shall provide Fox Lea Farms with the proposed schedule of construction activities. The Construction Manager shall provide an updated schedule at least every 60 days after construction commences until all horizontal site and development work is complete.~~

~~e. Provision of Fox Lea Farm information to contractors. The "Fox Lea Description and Information" included in the Developer's Agreement shall be provided to all contractors and subcontractors working on the property, shall be posted and available in the construction trailer, and shall be posted on the Permit Board during site construction activities.~~

~~b. Initial Meeting between Parties. Fox Lea Farm's agents and the Developer's Construction Manager shall hold an initial meeting prior to commencement of any land development and construction activities on the subject property. The meeting shall be held at least two (2) weeks prior to commencement of any land development and construction activities on the subject property. Prior to the initial meeting, the Construction Manager shall provide to Fox Lea Farm's agents a proposed written construction schedule. At the initial meeting, the parties shall review and discuss Developer's proposed construction schedule, including the nature and extent of site work to be performed during each phase as well as the personnel to be employed, for purposes of coordinating before and during land development and construction. The stipulations relating to Developer's obligations before and during land development and construction activities shall also be reviewed and discussed by the parties. Within one (1) week following the initial meeting, and based upon the parties' discussion at the meeting, the Construction Manager shall provide Fox Lea Farm's agents with a finalized written construction schedule.~~

~~c. Weekly Meeting between Parties. Once land development and construction has begun on the subject property, the Developer's Construction Manager shall schedule a regular weekly meeting or conference call, during working hours, with Fox Lea's agent(s) to discuss the current status of land development and construction on site. Any anticipated changes to the construction schedule must be communicated at this time, and an updated written construction schedule shall be provided to Fox Lea Farm at this time.~~

~~d. Notice. The Developer or its Construction Manager shall notify Fox Lea Farm's agent(s) of any material change in land development or construction schedule by email and phone as soon as reasonably practical, but within at least five (5) days of making such change of making such change, and in no event shall any such change be implemented without prior notice to Fox Lea Farm as specified hereof. An updated written construction schedule shall be provided to Fox Lea Farm's agents upon request.~~

[Modified to accept, with modifications, language proffered by Fox Lea on September 23].

Post-Land Development and Post construction Development and Use Standards.

17. The Developer shall comply with all terms of the Developer's Agreement offered by the Developer concurrent with the rezoning, and shall demonstrate that any required off-site improvements and recorded documents have been completed prior to the approval of the final plat. **[Windham proffer to implement settlement; Windham accepted amendments to the Agreement and Notice from Fox Lea on September 16].**

18. Additional provisions in the declarations and covenants for the subdivision. Developer will submit deed restrictions for the Property to the City for review prior to the

application for final plat approval, as required by Section 86-232(4) of the Land Development Code. The deed restrictions shall include:

a. A Notice of Proximity for I-75, Fox Lea Farm and the Fox Lea Operations (which also will be recorded in the public records separately), as set forth in Exhibit B to the Developer's Agreement. The deed restrictions will require every purchaser or renter to execute an acknowledgement of the Notice of Proximity, and copies of the acknowledgements will be maintained by the homeowners' association and provided to Fox Lea Farm and the City upon request.

b. The following restrictions to protect Fox Lea Farm:

i. The use of outdoor speakers or outdoor amplified music are prohibited on Lots 33-52, as depicted on the Binding Master Plan. Speakers for fire or burglar alarms oriented to the north are excepted.

ii. The use of fireworks, as defined in Florida Statutes, are prohibited.

iii. The launching or operation of drones or radio-controlled aircraft from the Property which fly over Fox Lea Farm is prohibited, unless permission is received in writing from Fox Lea Farm.

iv. The burning of trash or yard waste, and other outdoor burning such as bonfires, is prohibited, but this prohibition shall not apply to outdoor barbecues for cooking, outdoor propane heaters, or small fire pits/fire tables.

[Windham proffer to implement settlement; Windham has accepted Fox Lea proposed changes to developer agreement and notice of proximity sent September 16 to include renters.]

FOX LEA DEMANDS TO WHICH WINDHAM HAS NOT AGREED

DEVELOPMENT STANDARDS

~~1. — There~~No development shall be ~~no pools permitted on those lots closest to the Property's southern property line, which are designated on the PUD Concept plan as lots 33-50.~~
[Fox Lea demand on August 23; Windham cannot agree.]

~~2.1. — Lots 33-50 on the revised Binding Master Concept Plan shall be removed from allowed within the area south of the internal roadway, shaded in blue and there shall be no lots south of that road at all labeled "Compatibility Buffer" on Exhibit "A" attached hereto.~~ **[Fox Lea demand on September 13 revised September 18 and again on September 23; Windham has revised the Binding Master Concept Plan to reduce the number of lots south of the internal road by 5, but Windham cannot otherwise agree]— to no development on a 300' wide buffer area.**

~~3.2. — The southernmost southern stormwater pond must, wall, berm and landscaping shall be moved further north.~~ **[Fox Lea demand constructed within the area shaded in green on Exhibit "A" attached hereto. [New Fox Lea demand on September 18/23; Windham cannot agree.]**

~~4.3. — The wall and berm must be moved further north. No pools shall be permitted on the southernmost lots on the approved PUD Concept plan unless development is prohibited in the area shaded in blue and labeled "Compatibility Buffer" on Exhibit "A" attached hereto.~~ **[Fox Lea demand on August 23, modified September 18/23; Windham cannot agree.]**

LAND DEVELOPMENT, CONSTRUCTION MANAGEMENT AND STAGING

4. Southern Property Line Wall, Berm and Construction Screen. ~~Prior to commencement of~~ The Developer shall not proceed with any land development and construction activities on the property for any other purpose, ~~Developer shall complete construction of the five foot (5') berm and eight foot high (8') concrete wall located along the entire length of and contiguous to the southern property line and Fox Lea Drive. Additionally, prior to commencement of land development and construction activities on the Property, Developer shall erect~~ erecting a temporary construction screen to be located along (hereinafter the southern "Construction Screen") is completely constructed and erected, as specified below:

a. Location. The Construction Screen shall be erected on Fox Lea Farm's property line, ~~whereas, the location, composition, and terms for installation and removal extent of the screen which~~ are more specifically depicted in Exhibit ~~"C"~~ "C" attached hereto. ~~The temporary construction screen~~

b. Installation, Duration, Maintenance and Removal; Entrance onto Fox Lea Dr. and Fox Lea Farm Property. At the initial meeting held between Fox Lea Farm's agents and the Developer's Construction Manager, the parties ~~shall be fully installed and erected before construction of the aforementioned berm and wall can begin, and coordinate as to the timing and other necessary details relating to installation of the Construction Screen. The Construction Screen shall remain in place for the entire duration of all land development and construction activities on the property unless agreed to otherwise by the parties in writing; further, the site Developer shall maintain the Construction Screen its original condition and take measures necessary to provide for its stability at all times. Should maintenance work become necessary, the parties shall notify each other and make arrangements for the work to be performed, including machinery used the timing of and persons and brought on-site, shall be limited to only that necessary for the installation of the temporary construction screen until the time of such temporary construction screen's completion. It is understood that the equipment permitted access for such maintenance work. Upon the completion of all land development and construction activities permitted prior on the property, the parties shall coordinate as to the wall, berm timing and temporary construction screen's completion~~ other necessary details relating to removal of the Construction Screen. At no time shall the Developer, its agents, or its contractors, subcontractors or other site workers enter onto Fox Lea Dr. or Fox Lea Farm's property without permission from Fox Lea Farm, which shall not be unreasonable withheld.

c. Cost. The Developer ~~shall be limited to only those activities responsible for all costs associated with the installation, maintenance and removal of the Construction Screen.~~

5. Design. The Construction Screen shall be at least twelve feet (12') in height and shall be made of material commonly used for the screening of land development and construction sites so long as the material provides at least ninety percent (90%) opacity and allows for sufficient air flow. The parties shall work together at the initial meeting held between Fox Lea Farm's agents and the Developer's Construction Manager to determine the specific screening material and details that meet these obligations.

[New demand on September 23; no evidence this is necessary. Council lacks any authority to require Windham to construct a temporary or permanent screen on Fox Lea's property.]

5.6. Construction of the Southernmost Wall and Berm. Once the Construction Screen is completely installed, the Developer may commence those land development and construction activities limited to and absolutely necessary for the ~~wall, berm and temporary construction screen's construction~~; sole purpose of constructing the five foot (5') berm and eight-foot-high (8') concrete wall both extending east to west along the entire length of the southernmost edge of the developed area of the property (hereinafter "Southernmost Wall and Berm"); therefore, any additional or indirectly-related land development or construction activities are expressly prohibited until the ~~wall, berm~~ Southernmost Wall and ~~temporary construction screen are~~ Berm is completely constructed. [Fox Lea demand on September 13, further revised September 16 and 23; Windham has proffered Stipulation 11 to address construction of the berm, but cannot agree to Fox Lea's ~~demand for a visual screen~~ language; not clear what "absolutely necessary" would include or exclude; many other activities are necessary to make construction of the wall and berm functionally feasible].

7. Timing of Land Development and Construction. The Developer shall use its best efforts to limit land development and building construction along the southern boundary during the months of January, February, March, July and August. [Windham's alternate language has been in the narrative since last November and applies to horizontal construction and roofing; Windham cannot agree to the more expansive language here.]

6-8. Monitoring System. [Fox Lea demand on August 23; Windham has proffered Stipulation 14 to address this, including modifications to address concerns raised by Fox Lea's engineer; Fox Lea has directed its engineer to provide new/revised terms; Fox Lea now demands a stipulation requiring a separate agreement between Windham and Fox Lea prior to any construction; Windham cannot agree].

7. Bond for Monitoring Program. [Fox Lea demand September 18 – Fox Lea demand Windham provide a bond in Fox Lea's favor to guarantee performance of the monitoring program; Windham cannot agree.]

8. Inspection. [Fox Lea August 23 demand; Windham Stipulation 15 – Fox Lea wishes to be able to name a contracted inspector who is not a licensed contractor or engineer; Windham would be agreeable but Fox Lea has not provided language to include.]

9. Notification and Communication. [Fox Lea demand on August 23; Windham has proffered Stipulation 16 to address the issues raised; Fox Lea has indicated it wants further changes but has not yet provided language].