



The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

March 22, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Harvestwood Estates
PROJECT MUNICIPALITY : Middleborough
PROJECT WATERSHED : Taunton River
EOEA NUMBER : 13973
PROJECT PROPONENT : Maroney Building & Contracting
DATE NOTICED IN MONITOR : February 20, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

As described in the Environmental Notification Form (ENF), this project consists of an eight lot residential cluster subdivision on a 23.52± acre site located off Old Centre Street in Middleborough. The project will include an 1,100± linear foot cul-de-sac roadway, utilities, individual on-site septic systems, and stormwater management basins to mitigate stormwater runoff from roadways and individual lots. The project site is presently undeveloped and comprised of forested upland areas with large areas of Bordering Vegetated Wetlands (BVWs) in the eastern and southern portions of the site. Additionally, there is a Certified Vernal Pool (CVP) located in the northeastern corner of the site, bisected by the property boundary. The project site contains land identified as *Estimated* or *Priority Habitat* by the Natural Heritage and Endangered Species Program (NHESP) for the Eastern Box Turtle (*Terrapene carolina*).

The project is undergoing MEPA review because the project requires a State agency action and will result in the taking of endangered or threatened species or species of special concern on a project site greater than two acres in area located in a mapped Priority Site or Rare Species Habitat (301 CMR 11.03(2)(b)(2)). The project will require a Conservation and Management Permit from NHESP in accordance with the Massachusetts Endangered Species Act (MESA) and its regulations (321 CMR 10.23). The project will require a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the U.S. Environmental Protection Agency (U.S. EPA). Finally, the project will require an Order of Conditions from the Middleborough Conservation Commission (or a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection (MassDEP) if the local Order is appealed).

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that may have significant environmental impacts and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction exists over rare species, wetlands, and stormwater.

The project will result in the permanent alteration of 4.54 acres of the 23.52-acre site through the creation of the subdivision roadway, single-family dwellings, driveways and manicured lawn areas. Open space areas will be protected by the creation of a Conservation Restriction (CR) (16.19 acres) and the use of deed restrictions (for a total of 2.79 acres) on individual development lots. The manicured rear yards of several lots have been situated outside the 100-foot buffer zone to the CVP and at a minimum of 50 feet from the edge of the on-site BVW. A five-foot wide gravel infiltration swale will be constructed at the limit of some manicured lawn areas to facilitate stormwater management within the rear yards. Stormwater generated from roof runoff, driveways, front yards, and the subdivision roadway will be directed to deep sump, hooded catch basins within the roadway. Stormwater runoff from the roadway will be directed through a water quality inlet, a sedimentation basin and a detention basin prior to discharge over land in the southwestern portion of the property. The stormwater management system will be designed in accordance with the Massachusetts Department of Environmental Protection (MassDEP) stormwater management policy.

Concern has been raised by an abutting property owner about the project's potential impacts to wetland resource areas (including the CVP), habitat, and the capability of local authorities to effectively monitor project impacts upon completion. I would like to remind the public that MEPA does not pass judgment on the need for a project, nor does MEPA have the authority to control local permitting decisions and monitoring capacity. However, in this instance, given the requirement for a Conservation and Management Permit from NHESP, I am confident that the terms and mitigation outlined in that permit will fulfill the mandate and goals of protecting *Estimated* or *Priority Habitat* and, in turn, the CVP as outlined within MESA. Furthermore, the ENF included an alternatives analysis that also considered an eight lot and an 11-lot conventional subdivision layout, as well as a no-build alternative. This alternatives analysis concluded that the currently proposed eight lot cluster subdivision would preserve the

largest contiguous area of Eastern Box Turtle habitat. Additionally, the proponent performed a wildlife habitat analysis in May 2006 in accordance with MESA regulations and guidance.

The NHESP comment letter stated that NHESP has found that the project will result in a “take” of Eastern Box Turtle through the disruption of feeding, migratory, and over-wintering behavior and through directly harming or killing individuals of this species during construction. However, through ongoing discussion between the proponent and NHESP, the proposed project mitigation and net benefits appear to meet the performance standards outlined in the MESA regulations at 312 CMR 10.23. The proponent must continue to work closely with NHESP during the Conservation and Management Permit application and approval process to develop construction-related oversight, work-timing considerations, temporary barriers, and signage during the construction period. The proponent will be required as part of the Conservation and Management Permit to install a permanent barrier and signage in accordance with the proposed CR. As proposed, the conservation restriction and deed restrictions will include the CVP and its associated 100-foot buffer zone in its entirety. I strongly encourage the proponent to work with NHESP, the Middleborough Conservation Commission and the future homeowners association (if applicable) to establish a feasible, transparent monitoring and reporting protocol for those areas protected by the CR, including funding mechanisms and responsible parties.

I have determined that the ENF has sufficiently defined the nature and general elements of the project and proposed measures to avoid and mitigate environmental impacts. I am satisfied that any remaining issues can be adequately addressed during the state and local permitting and review process. The proposed project, as described in the ENF, requires no further review under MEPA.

March 22, 2007

Date



Ian A. Bowles

Comments received:

02/16/2007 Tanya April-Trzeciak
 03/09/2007 Tanya April-Trzeciak (2nd letter)
 03/09/2007 **Massachusetts Department of Environmental Protection – SERO**
 03/13/2007 Division of Fisheries and Wildlife – Natural Heritage and Endangered Species Program

13937enf

IAB/HSJ/hsj