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SECRETARY

**CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
DRAFT ENVIRONMENTAL IMPACT REPORT**

PROJECT NAME : Oceanside Village at Scituate  
 PROJECT MUNICIPALITY : Scituate  
 PROJECT WATERSHED : Atlantic Ocean  
 EOE A NUMBER : 13269  
 PROJECT PROPONENT : Oceanside Village, L.L.C.  
 DATE NOTICED IN MONITOR : April 11, 2007

As Secretary of Energy and Environmental Affairs (EOEEA), I hereby determine that the Draft Environmental Impact Report (EIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). The proponent may submit the Final EIR for MEPA review.

Project Description

As described in the Expanded Environmental Notification Form (EENF) and updated in the Draft EIR, the project involves redevelopment of a 50-acre site as a 250-unit residential subdivision. It will include three apartment buildings, with 27 units each, and 169 townhouses. The project includes demolition of existing buildings and construction of an internal subdivision roadway, 835 parking spaces (located in garages, driveways and underneath the apartment buildings) and other associated infrastructure.

The 50-acre parcel is located between Tilden Road and Hatherly Road and adjacent to the Shore Acres and Hatherly Beach neighborhoods. The Wampatuck Elementary School is located to the northwest. The site includes an existing access drive, seven buildings and foundations and slabs from buildings that have been razed. The parcel was part of the 115-acre Formerly Used Defense Site (FUDs) known as the Former Scituate Proving Grounds. The Scituate Proving Grounds FUDs was utilized by the U.S. Army from 1918 to 1921 as a proof range for a variety of guns and for ordnance/explosives storage and includes several structures associated with that use. The site contains contaminated areas and is undergoing assessment and remediation consistent with the Massachusetts Contingency Plan (MCP) (310 CMR 40.0000). Undeveloped portions of the site consist of wetlands and forested areas. The site is zoned for residential use.

### Jurisdiction & Project Review

The project is undergoing environmental review and requires a mandatory EIR pursuant to Section 11.03 (1)(a)(2) of the MEPA regulations because it will create more than 10 acres of new impervious area. The project requires a Sewer Connection/Extension Permit from the Department of Environmental Protection (MassDEP) and it may require Federal Consistency Review from the Office of Coastal Zone Management (CZM). The project requires an Order of Conditions from the Scituate Conservation Commission (and hence a Superseding Order of Conditions from MassDEP in the event the local order is appealed). In addition, the project may require a National Pollutant Discharge Elimination System (NPDES) Stormwater Permit for Construction Activities.

The proponent has applied for a Zoning Board of Appeals (ZBA) Comprehensive Permit from the Town of Scituate, pursuant to M.G. L. Chapter 40B, to construct low and moderate income housing. A conditional approval was issued by the ZBA on January 21, 2005.<sup>1</sup> The proponent has appealed this decision to the Housing Appeals Committee (HAC). Review of the project by the HAC confers broad scope jurisdiction that extends to all aspects of the project with the potential to cause significant Damage to the Environment. These include land alteration, wetlands, drainage, water quality, traffic, wastewater and contaminated soils.

### Review of the Draft EIR

The EIR includes a thorough description of the project, including project phasing, and a detailed description of the construction methods. It includes a brief description of each state permit or agency action required or potentially required for the project, and addresses the project's consistency with applicable performance standards. The Draft EIR includes a discussion of the consistency of the project with Executive Order 385 (Planning for Growth), the Commonwealth's Sustainable Growth Principles and local and regional growth management programs.

The Draft EIR analyzes the following three alternatives: a No-build Alternative, a Preferred Alternative and a Residential Cluster Alternative. The Residential Cluster Alternative contains approximately 200 units of housing and is designed consistent with the Town's Cluster Bylaw which allows 1 unit per 10,000 square feet (sf), up to a maximum of 4 units per acre. This analysis demonstrates that the Preferred Alternative and the Residential Cluster Alternative have a similar level of impact in terms of land alteration, creation of impervious surfaces and wetlands impacts although the Residential Cluster Alternative consists of less housing. The Preferred Alternative would alter 31.3 acres of land, create 15.2 acres of impervious surfaces and include direct alteration of 550 sf of wetlands. The Residential Cluster Alternative would alter 32.6 acres of land, create 14.9 acres of impervious surfaces and include direct alteration of 720 sf of

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<sup>1</sup> The decision limited the size of the development to 150 units and required use of an on-site wastewater system.

wetlands. The analysis does not compare impacts related to water demand, wastewater generation and traffic generation although these would be expected to drop by about 20%.

According to the Draft EIR, the Preferred Alternative will retain a portion of the site as undeveloped open space although estimates of the protected open space range from 16.7 to 35 acres. The filing indicates that the open space includes existing forested areas, wetlands, landscaped areas and stormwater management areas. It indicates that a Conservation Restriction, to be held by the Town of Scituate, will be placed on 19 acres (page 3-5) to ensure it is protected in perpetuity. Although the Preferred Alternative provides a village green and maintains some buffer around wetlands, alternative site designs could further maximize protection of open space and wildlife habitat.

The Draft EIR identifies wetland resource areas and analyzes impacts to wetlands. It indicates that 550 sf of BVW will be filled and that alternatives to avoid direct wetland alterations will be evaluated during project permitting. It includes a general commitment to wetland replication, in the event that the alteration is not avoided, but it does not identify a wetland replication area or include a wetland replication plan in the Draft EIR. The Draft EIR does not demonstrate that the proponent has minimized impacts to wetlands to the maximum feasible extent or sufficiently mitigated any unavoidable impacts.

The Draft EIR includes a stormwater plan, storm drainage calculations and addresses the consistency of the drainage plan with the MassDEP Stormwater Management Policy. It indicates that the stormwater will be managed through a combination of Best Management Practices (BMPs), including deep sump catch basins, street sweeping, sediment forebays, water quality inlets and extended detention basins. Efforts to minimize impervious surfaces include placing parking underneath the buildings and minimizing the width of access drives.

The Draft EIR indicates that water and wastewater needs will be met through extension of the municipal water and sewer systems. The Draft EIR includes a range of estimates for water demand and wastewater generation. According to the project proponent, an accurate estimate of water demand and wastewater generation is 25,346 to 27,550 gallons per day (gpd) and 25,000 to 28,000 gpd, respectively. These estimates are based on water usage data developed from three Massachusetts condominium developments that the proponent asserts are comparable to the proposed development. Estimates prepared by the Town, and/or its consultants, are significantly higher at 40,260 and 50,575 gpd, respectively. The standard methodology used by MassDEP for estimating wastewater generation (110 gpd per bedroom) yields approximately 62,590 gpd, which is greater than double the project proponent's estimate.

The Certificate on the EENF did not require additional information regarding water demand estimates and comments from MassDEP on the EENF indicated that the Town was operating within its withdrawal limits and the increased volume associated with this project would not alter that status. The Draft EIR indicates that the Town's Water Withdrawal Permit

authorizes the withdrawal of water at an average of 1.73 million gpd and indicates that reports issued by the Town to MassDEP identify the average daily water flow for 2004 at 1.48 million gpd. The Draft EIR indicates that subsequent reports include significant increases in unmetered water and unaccounted for water that underscore the importance of addressing water losses. The proponent indicates that it can offset its water consumption through a commitment to provide up to \$25,000 for the repair of water main leaks. This measure could reduce water loss by 40,320 gpd. In addition, the Draft EIR describes water conservation efforts.

Until January 2005, the Town of Scituate was under a MassDEP Administrative Consent Order (ACO) because it was discharging excess flow from the Scituate Waste Water Treatment Plant (WWTP) to a tidal ditch without a permit. The ACO required the Town to upgrade its wastewater treatment facility, develop an I/I removal plan and create a Growth Control and Connection Plan (GCCP) to plan for and prioritize appropriate expansion of service in the future. The resulting Comprehensive Wastewater Management Plan (EOEA #5512) underwent MEPA review. These reports identify needs areas and priorities for allocation of capacity created by the expansion of the Scituate Waste Water Treatment Plant extension of the sewer system and guide the Town's review and approval of sewer connections. The Town identified sewerage of priority districts served by septic systems as a high priority. The type of project proposed by the proponent (connections of subdivisions in priority districts) was given a very low priority within this planning process. The Town has also proposed elimination of at least 318,500 GPD of I/I (50% of existing I/I) by the year 2020 to attain additional capacity needed to service future flows.

The Draft EIR asserts that there is adequate capacity within the existing and proposed water and sewer infrastructure to manage the project flows. The WWTP authorized average daily flow is 1.6 million gpd. The Draft EIR presents the average daily flow, based on 12-month rolling averages, which range from .982 million gpd to 1.33 million gpd. An average of the 12-month rolling averages over a 63-month period from January 2001 through March 2006 is 1.21 million gpd. The highest average daily flow was recorded in December 2005 at 1.5 million gpd. Comments from CZM express concern with the use of data from a 63-month period as earlier flow values (which reflect fewer sewer connections) have the potential to skew the average downward. CZM notes that data available from the Scituate Waste Water Treatment Facility (WWTF) NPDES discharge monitoring reports indicate that during the period from April 2005 through March 2006, the 12-month average flow was 1.38 million GPD. Information provided in the Draft EIR indicates that the Greenbush sewer extension permit and Cliffs sewer extension permit represent an approximate 170,000 gpd increase in wastewater flow. If the proposed project were permitted, total wastewater flow could increase by approximately 232,590 gpd and, using the most recent flow values (1.33 million gpd or 1.38 million gpd) would approach or exceed the facility's authorized flow level. The 2003 CWMP Notice of Project Change (NPC) submitted by the Town to MEPA indicated that the total design-year flows for the currently sewerage areas and proposed new sewer districts was 1,525,600 GPD, or 95% of design capacity.

The Draft EIR indicates that, although an on-site system may be technically feasible, it is

not financially viable because of the costs of the system and the amount of land required for its effectiveness (approximately 4 acres). It notes that changes to MassDEP regulations permit soil absorption systems to be constructed in soils that were previously unsuitable but that such systems require the use of a low loading effluent rate. The Draft EIR does not evaluate a reduced build alternative that could be supported by an on-site system. The Draft EIR indicates that the proponent is willing to discuss support for removing extraneous flow from the sewer system (Infiltration/Inflow (I/I)) although it does not make a specific commitment to do so.

The Draft EIR has not demonstrated that the facility proposed for receipt of project wastewater has adequate capacity to accommodate the increased wastewater flows nor has it identified a commitment that will mitigate impacts adequately. Comments from the Town and/or its consultants on the EENF and through the Comprehensive Permit process indicate that capacity is not available to serve this project. Although the proponent provides an assessment of available capacity, there is no evidence that either the Town or MassDEP concur with the conclusions in the Draft EIR. Comments from MassDEP and CZM both identify concerns with capacity. As CZM comments note, the Town's commitment to reduce I/I will provide additional capacity over time, but the actual effectiveness of the projects may be overstated. MassDEP comments on the EENF noted that future capacity would be directly related to the effectiveness of I/I mitigation efforts.

The EENF included a traffic study that adequately described the project impacts on existing and future roadway conditions. A copy of the report is included in the Draft EIR. According to the traffic study, the project is expected to generate approximately 1,420 new vehicle trips on an average weekday and will generate approximately 106 trips during the morning peak period and 131 trips in the afternoon peak period. Intersections along Hatherly Road and Tilden Road would continue to operate at Level of Service (LOS) B or better at full-build. The proponent has committed to roadway improvements and inclusion of sidewalks and crosswalks within the site design to provide safe pedestrian access. The Draft EIR indicates that the site design includes internal sidewalks, a school bus stop and a pedestrian walkway to the adjacent Wampatuck Elementary School from Drive F.

The Draft EIR includes an assessment of contamination on the site, updates on related Release Tracking Numbers (RTN) and a plan for addressing outstanding issues consistent with the MCP. Assessment and remediation of the site is the responsibility of the current owner, Suburban Realty Trust. This responsibility will be transferred to the project proponent upon acquisition of the site. MassDEP conducted an initial site investigation and issued a Notice of Responsibility to initiate assessment and remediation activities. A second NOR was issued by MassDEP requiring expedited removal action for the drum disposal area. Assessment and remediation activities have been completed by the property owner with the assistance of Licensed Site Professionals (LSP). In addition, the project proponent is working with an LSP to perform due diligence, monitor the owner's response actions and to assist in planning response actions necessary upon acquisition of the site. The project has been classified as a Tier II site, which

enables the clean-up to proceed without a permit or direct oversight by MassDEP. In addition, the site has been designated as an MCP Public Involvement Plan (PIP) Site, which requires property owners to provide opportunities for the community to be involved and informed as the assessment and cleanup of the site progresses.

The Draft EIR indicates that concentrations of oil and hazardous materials (primarily lead, petroleum hydrocarbons and semi-volatile organic compounds) were detected in some soil samples at concentrations above MCP Reportable Concentrations (RCs) and MCP soil standards for unrestricted residential use. These include releases in the vicinity of a former transformer enclosure, former fuel oil underground storage tanks (UST), former gasoline USTs, former process oil aboveground storage tanks, a drainage outfall and a drum/demolition debris disposal area. The drums, drum fragments and approximately 444 tons of contaminated soil and construction debris were removed. The proponent has indicated that remediation will consist primarily of removing contaminated sediments and disposing of them in an approved disposal facility.

Comments from MassDEP indicate that redevelopment efforts may proceed while investigation and remediation efforts are underway. These comments indicate that the Phase II Comprehensive Site Assessment Report will address areas of potential concern that have not been evaluated to date and identify April 2010 as the deadline for achieving a level of "No Significant Risk."

The Draft EIR provides a description of construction period impacts, including impacts to vegetation, potential impacts from erosion and sedimentation, and the impact of truck traffic on adjacent roadways and impacts to adjacent land uses. It indicates that the proponent will take appropriate measures to mitigate these impacts through installation of siltation barriers consisting of double staked hay bales or trenched silt fence to minimize sedimentation and erosion; stabilized construction entrances/exits; temporary sedimentation basin and diversion swales; catch basin inlet protection; and covering trucks for off-site hauling and using wetting agents on areas of exposed soil measures to control dust.

Based on a review of the Draft EIR and comment letters, I find that the proponent has provided adequate information within the Draft EIR regarding the project, alternatives and potential impacts. Outstanding issues related to wastewater capacity and additional analysis of alternative site designs can be addressed in the Final EIR.

## **Issues for the Final EIR**

### Wetlands, Drainage and Open Space

The proponent should analyze additional site designs that eliminate direct wetland alterations, minimize alterations within the buffer zone to wetlands and consolidate open space. The Final EIR should include a commitment to wetlands replication, at a ratio greater than 2:1, for any direct wetland alterations. It should include a wetlands replication plan and represent the wetlands replication area on project plans. The Final EIR should further investigate feasible methods of reducing impervious surfaces and minimizing work within the buffer zone to wetlands.

Typically, cluster bylaws define open space as preserved natural areas containing a maximum of 25% of wetlands. The Final EIR should provide clarification regarding the amount and type of open space that will be incorporated within the design. It should address what percentage of the open space consists of wetlands, stormwater management and landscaped areas.

As requested by CZM, the Final EIR should analyze how bio-retention areas could be incorporated into the stormwater management plan as a substitute for the extended detention basins to reduce land alteration, improve pollutant removal, decentralize stormwater concentrations and more closely mimic natural hydrology. In addition, the proponent should use updated and site specific soils information to develop hydrological information for the site and indicate whether use of this updated information results in changes to the stormwater design. Stormwater infrastructure and outlets should be illustrated on a reasonably scaled project plan.

### Water and Wastewater

As the proponent notes in the Draft EIR, the Town could propose changes to the priorities established in through its sewer planning process to provide capacity for this project. Alternatively, it may be required by the HAC to provide sewer service. In either case, because the project requires a Sewer Connection Permit and would consist of a change to the CWMP, a Notice of Project Change (NPC) for the CWMP (EOEA #5512) must be filed with MEPA. The NPC should include an analysis of available capacity, environmental impacts associated with the project change and a commitment to offset the project's wastewater flows through I/I mitigation. The NPC should be submitted prior to or with the Final EIR so that the project and any proposed changes to the CWMP can be reviewed jointly.

In the event that the HAC does not support the project proponent's appeal of the Comprehensive Permit, the proponent will need to consider a reduced build with an on-site wastewater system. Inclusion of such an alternative in the Final EIR would avoid the need to file a future Notice of Project Change (NPC) for the Oceanside Village at Scituate project.

The Final EIR should provide additional clarification on capacity issues raised by state agency comments, identify demand represented by previously approved wastewater connections and identify flow associated with any sewer district areas from the not identified in the Draft EIR (e.g. Musquashcut district). It should include an analysis of the Town's GCCP and the project's consistency with it. Wastewater estimates should be based on the standard methodology of 110 gpd/per bedroom. The Final EIR should include a commitment to offset project flows through I/I mitigation and should identify projects that can that could be provided to offset the increased flow associated with this project. I encourage the proponent to consult with MassDEP regarding capacity issues and proposed mitigation prior to filing the Final EIR.

The Final EIR should include additional information regarding mitigation for increased water demand. The commitment should be based on achieving actual reduction of water loss rather than a monetary contribution.

### Transportation

The Final EIR should include a site circulation plan that clearly illustrates how drivers, walkers and bicyclists will be accommodated on the site and how connections will be made to existing walkways and bike paths. The site design includes internal sidewalks, an onsite school bus stop and a pedestrian walkway to the property line of the adjacent Wampatuck Elementary School from Drive F. I encourage the proponent to consult with the school regarding extension of the walkway across the school property to connect to the school. The Final EIR should provide additional information on these issues.

### Contaminated Soils

The Final EIR should provide any supplemental information that has been developed regarding assessment of contamination or response actions since the filing of the Draft EIR, including an overview of community outreach efforts consistent with its status as a Public Improvement Plan (PIP) site. It should include a summary of the Phase II Assessment if it is completed prior to the filing of the Final EIR.

### Mitigation and Section 61

The Draft EIR indicates that the proponent is committed to the following measures to avoid, minimize and mitigate project impacts:

- protection of 19 acres of open space through the placement of a CR to be held by the condominium association;
- construction of a walkway to the Wampatuck school from the site;
- STOP sign control with a painted stop line at East Site Drive and West Site Drive approaches to Hatherly Road and Tilden Road;



- maintenance of a minimum of 360 feet of sight distance along Hatherly Road and 300 feet of sight distance along Tilden Road for the east and west site drives respectively;
- installation of intersection advanced warning signs along Hatherly Road and Tilden Road;
- installation of a crosswalk along Tilden Road at the proposed site entrance;
- contribution to the Town, in the amount of \$25,000, to repair water leaks;
- minimized lawn areas and use of native and drought tolerant plant species to reduce water demand;
- prohibition on use of road salts, pesticides, herbicides and fertilizers;
- wetland replication for any direct wetland impacts;
- remediation will be conducted under the supervision of an LSP; and
- minimization of construction period impacts through installation of siltation barriers, stabilized construction entrances/exits, temporary sedimentation basins and diversion swales, catch basin inlet protection, covered trucks for off-site hauling and use of wetting agents on areas of exposed soil.

The Final EIR should include a summary of all mitigation measures to which the proponent has committed. The Final EIR should include revised Section 61 Findings for use by the state permitting agencies.

#### Response to Comments

The Final EIR should include a copy of this Certificate and a copy of each comment received, along with a response to comments. The response to comments should be in the form of a direct narrative response. The Final EIR should present any additional narrative or quantitative analysis necessary to respond to the comments received.

#### Circulation

The proponent should circulate the Final EIR to those parties who commented on the Draft EIR, to any state agencies from which the proponent will seek permits or approvals and to local officials.

May 18, 2007

Date



Ian A. Bowles

