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August 24, 2007

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

PROJECT NAME : Kline Residence
PROJECT MUNICIPALITY : Truro
PROJECT WATERSHED : Cape Cod
EEA NUMBER : 14067
PROJECT PROPONENT : Stephens Way Nominee Trust, D. Landreth, Trustee
DATE NOTICED IN MONITOR : July, 25, 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).

I have received numerous comment letters that oppose the proposed project based on its potential impact to environmental and historical interests, as a structure out of place with its context. The Truro Historical Commission states that "development of the Hopper Landscape would diminish the cultural importance of this scene as part of Hopper's legacy." Commenters also cite a number of reports and studies that identify the coastal heathland ecosystem in which the project is proposed as a unique habitat, fragile in nature and noteworthy in character.

While I share the concerns expressed by commenters, MEPA jurisdiction is limited in this instance to potential impacts to rare species. Comments from and consultation with the Natural Heritage and Endangered Species Program (NHESP) indicate that the proponent has consulted with NHESP to situate the project to avoid and minimize impacts to rare species; however, NHESP indicates that a "take" of Broom Crowberry (*Corema conradii*) may occur.

NHESP indicates that if, on formal review by NHESP, a take is determined to occur, the project will be required to develop and implement a conservation plan that provides a long-term net benefit to the impacted species. If as a result of that review the NHESP proposes to issue a Conservation and Management Permit, I require that the NHESP publish notice of the availability of the permit, and associated draft conservation plan, in the *Environmental Monitor* for a twenty-day public comment period. Comments will be directed to NHESP for their consideration prior to the issuance of the Conservation and Management Permit. The proponent and state agencies should forward copies of the Conservation and Management Permit and associated conservation plan to the MEPA Office for completion of the file.

In closing, I wish to note that beyond their legal obligations associated with the development, the proponents have an opportunity to demonstrate, as stewards and good neighbors, respect for the environmental and cultural context of their project. I strongly encourage the proponent to work cooperatively with the Town of Truro, the Truro Historical Commission (THC), and Massachusetts Historical Commission (MHC) during the design and pre-construction process to address the concerns raised by their comment letters. This should include an intensive (locational) archaeological survey (950 CMR 70) for the project to locate and identify any significant historical or archaeological resources that may be affected by the project. The results of this survey should be used in the consultation process to avoid, minimize or mitigate any adverse effects to significant archaeological resources.

Project Description and Jurisdiction

As described in the Environmental Notification Form (ENF), the project consists of the construction of a 6,500 square foot (sf) single family home and appurtenant structures on a 9.36± acre parcel of land on Stephen's Way in Truro. The project will alter approximately 0.73-acres and create 0.16-acres of new impervious area. The project will be served by an on-site septic system and an on-site potable drinking water well to be constructed in accordance with State and local health regulations. The project site contains an existing 2,000 sf historical home, identified by MHC as the Andrew C. Cobb House and listed on the Massachusetts Inventory of Historic and Archaeological Assets of the Commonwealth. Additionally, according the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP), the project site contains *Priority and Estimated Habitat* for several rare or endangered species. These species include: Northern Harrier (*Circus cyaneus*), Eastern Spadefoot Toad (*Scaphiopus holbrookii*), Eastern Box Turtle (*Terrapene carolina*), and Broom Crowberry (*Corema conradii*). As stated in the ENF, it is anticipated that the project will have no impact to wetland resource areas (coastal or inland wetlands or their associated buffer zones) as regulated by the Massachusetts Wetlands Protection Act.

The project is undergoing review pursuant to Section 11.03 (2)(b)(2) because it requires a State Agency action and will involve the taking of an endangered or threatened species or species of special concern on a project site two or more acres in area that has been mapped as a Priority Site of Rare Species Habitats. The project will require a Conservation and Management Permit from the NHESP in accordance with the Massachusetts Endangered Species Act (MESA). The project will also require permits from the Truro Building Department and the

Truro Board of Health, and may require approval from the Truro Planning Board. All wastewater permitting associated with the project will be handled at the local level by the Town of Truro.

Because the proponent is not seeking financial assistance from the Commonwealth, 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, the subject of the required State Agency Action.

Rare Species

As noted previously, the project site is located within *Priority Habitat* and *Estimated Habitat* as indicated in the 12th Edition of the *MA Natural Heritage Atlas*. Therefore, the project requires review through a direct filing with NHESP for compliance with the Massachusetts Endangered Species Act (MESA, MGL c131A) and its implementing regulations (321 CMR 10.00).

While no formal MESA filing has been submitted to date, the NHESP comment letter indicated that the preferred alternative included in the ENF incorporated the NHESP comments received during a consultation session between the proponent and NHESP representatives. The NHESP comment letter on the ENF further states that the preferred alternative appears to avoid a prohibited “take” of the state-listed vertebrate species (the Eastern Box Turtle, Eastern Spadefoot Toad and Northern Harrier). However, NHESP has noted that based on a preliminary review of the proposed project, it appears that a take of Broom Crowberry may occur, in which case a Conservation and Management Permit will be required.

In order for a project to be considered for a Conservation and Management Permit, the project proponent must (1) avoid and minimize impacts to state-listed species to the greatest extent practical, (2) demonstrate that an insignificant portion of the local population will be impacted or that no viable alternative exists, and (3) develop and implement a conservation plan that provides a long-term net benefit to the conservation of the local population of the impacted species. The NHESP comment letter states that once a MESA filing and a Conservation and Management Permit application have been submitted, they will make a final “take/no take” determination and, if necessary, decide whether the project meets the permitting standards for a Conservation and Management Permit. As noted above, I will require that the NHESP make the results of that review available for public comment.

Historical/Archaeological Resources

The project site contains an existing single family home that is listed on the MHC Inventory of Historic and Archaeological Assets of the Commonwealth. Furthermore, the project site is immediately adjacent to the Edward Hopper House, also a structure listed on the MHC Inventory of Historic and Archaeological Assets of the Commonwealth. The Edward Hopper House may be eligible for listing in the National Register of Historic Places because of

its association with the early 20th century artist, Edward Hopper. However, no such federal listing has been obtained at this time. The project will not directly alter the historic structures on either property. A substantial number of comment letters received expressed concern regarding the project and its relation to the landscapes once painted by Edward Hopper. It is my understanding that historic landscapes, when located within a designated Historic District, may be subject to additional scrutiny by the MHC. The project site is not located within a designated Historic District.

In response to comments from the THC and the MHC, supplemental information, such as complete building plans and building elevations, landscaping or screening, as well as a viewshed analysis, would be highly beneficial in facilitating consultation efforts. As noted above, I strongly encourage the proponent to respond constructively to the concerns expressed by these commenters.

MHC comments note that the project area is considered to be highly archaeologically sensitive and several recorded archaeological sites exist nearby in similar environments. The proponent, in collaboration with MHC and the NHESP, should conduct an intensive (locational) archaeological survey (950 CMR 70) for the project to locate and identify any significant historical or archaeological resources that may be affected by the project. The results of this survey should be used in the consultation process to avoid, minimize or mitigate any adverse effects to significant archaeological resources. I remind the proponent that surveys conducted in response to MHC's request should also be coordinated with the NHESP to ensure compliance with applicable regulations, if any, under the MESA regulations.

Based on the information in the ENF and after consultation with relevant public agencies, I find that no further MEPA review is required at this time. The project may proceed with obtaining required State permits. The proponent is advised that should there be a material change to the project, a Notice of Project Change (NPC) may be required under the MEPA Regulations (301 CMR 11.10).

August 24, 2007

Date



Ian A. Bowles

Comments received:

08/03/2007 Massachusetts Historical Commission
08/07/2007 Truro Historical Commission
08/08/2007 Mel and Dorothy Horowitz
08/08/2007 Betty Bingham
08/09/2007 Liza Bingham
08/09/2007 John Van Kirk
08/10/2007 Marty and Lorraine Rosenbaum
08/10/2007 Massachusetts Division of Marine Fisheries
08/10/2007 Lise Lange Striar
08/10/2007 Susan Kadar
08/10/2007 Nathalie Ferrier
08/11/2007 Joanne Barkan
08/11/2007 Anne Kandel
08/12/2007 Inez
08/12/2007 Patti Tetrault
08/12/2007 R. Bruce Boleyn
08/13/2007 Reatha Ciotti
08/13/2007 Brenda J. Boleyn
08/13/2007 Deborah Citrin and Elizabeth Dority (2 letters)
08/14/2007 Association to Preserve Cape Cod
08/14/2007 The Compact of Cape Cod Conservation Trust
08/14/2007 Laurence and Anton Schifffenhaus
08/14/2007 Paul Kiernan
08/14/2007 Massachusetts Department of Environmental Protection – SERO
08/14/2007 Elizabeth Adler
08/14/2007 Rene Lamadrid
08/14/2007 Lowell and Margot Rubin
08/14/2007 Robert and Joan Holt
08/14/2007 Naomi Miller
08/14/2007 Linda Armstrong
08/14/2007 Cape Cod Commission
08/14/2007 Massachusetts Historical Commission (2nd letter)
08/15/2007 Stuart and Valerie Miller
08/15/2007 Division of Fisheries and Wildlife – Natural Heritage and Endangered Species
Program
08/16/2007 Carole Ann Danner
08/16/2007 Sarah K. Peake – State Representative, 4th Barnstable District
08/21/2007 Robert O’Leary – State Senator, Cape & Islands District

IAB/HSJ/hsj