



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114-2524

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

ROBERT W. GOLLEDGE, JR.
SECRETARY

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

September 22, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS ON THE 3rd NOTICE OF PROJECT CHANGE

PROJECT NAME : Westport Lakes
PROJECT MUNICIPALITY : Westport
PROJECT WATERSHED : Buzzards Bay
EOEA NUMBER : 12703
PROJECT PROPONENT : American Links Courses
DATE NOTICED IN MONITOR : August 23, 2006

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c.30, ss.61-62H) and Section 11.17 of the MEPA regulations (301 CMR 11.00), I have reviewed the third Notice of Project Change (NPC3) submitted for this project and hereby determine that it **continues to require** the preparation of a Draft Environmental Impact Report (DEIR). The NPC3 submittal does not contain an adequate description of the project's impacts and proposed mitigation to rare species, historic and archaeological resources, and wetland resource areas located within the project site. I am continuing to require the preparation of a DEIR to ensure that the requirements of 301 CMR 11.07 are met, that the full range of project impacts have been fully analyzed, that the proponent has committed to a set of mitigation that will allow the state agencies to satisfy their Section 61 obligations, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency action. Should the proponent satisfactorily address the remaining substantive issues outlined in this Certificate in the DEIR such that no substantive issues remain to be addressed in a Final EIR, I will consider allowing the DEIR to be reviewed as a Final EIR in accordance with 301 CMR 11.08(8)(b)(2).

3rd Notice of Project Change (NPC3)

As described in this third Notice of Project Change (NPC3), the proponent is proposing to eliminate the construction of the 9-hole golf course and to only construct a standard residential subdivision consisting of 32 single family houses using the 3,500 linear foot (lf) roadway and stormwater infrastructure previously constructed part of the first NPC (NPC1) project activities (June 2002). The project's water supply demand (9,900 gallons per day (gpd)) and wastewater flows (9,900 gpd) will be served by individual on-site water supply wells and on-site subsurface sewage disposal systems in accordance with Massachusetts Title 5 regulations, respectively.

The proponent is not seeking financial assistance from the Commonwealth for the project. MEPA jurisdiction therefore extends to those aspects of the project that are within the subject matter of required or potentially required state permits and that have the potential to produce significant Damage to the Environment. In this case, MEPA jurisdiction extends to issues of land alteration, water quality, rare species, and historic and archaeological resources.

The project as currently proposed is undergoing MEPA review pursuant to Section 11.03 (2)(b)(2) of the MEPA regulations because the project involves the alteration of designated significant habitat and the taking of an endangered or threatened species. This project may also result in the alteration of will more than 25 acres of land and therefore is undergoing MEPA review pursuant to Section 11.03 (1)(b)(1) of the MEPA regulations. The project continues to require an access permit from the Massachusetts Highway Department (MassHighway) for access to Route 177, and a new Order of Conditions from the Westport Conservation Commission for the currently proposed residential portion of the project (and hence a Superseding Order from DEP if the local Order were appealed). The project may also require a Groundwater Discharge Permit, a Water Management Act Permit and a Drinking Water Program Permit from the Department of Environmental Protection (MassDEP). The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over one acre. If blasting will be required during project construction, the proponent will need to prepare a blast design plan pursuant to the Board of Fire Protection Regulations (577 CMR 13.09) for the proposed construction of roads, houses and utilities within the project site. Blasting mixtures that include perchlorate have been identified as the source of contamination in many Massachusetts public water supplies and thus should be prohibited from use in the project watershed.

Project History:

Originally proposed in a February 2002 Environmental Notification Form (ENF), the project included the development of a 9-hole golf course, club house, greens keeper's house and maintenance building, and 72 units of clustered residential development together with a 4-unit single family subdivision on a 216-acre site located near the intersection of Route 88 and Route 177 in Westport. The Secretary's Certificate on the ENF (March 2002) required the proponent to prepare an Environmental Impacts Report (EIR) for the project and to provide additional information regarding the proposed project's potential impacts to wetlands, rare species, wastewater, water management, historic resources, agricultural land areas, and historical / archeological resources. The originally proposed project has undergone MEPA review pursuant to Section 11.03 (1)(b)(1) and 11.03(b)(1)(2) because the project involved alteration of more than 25 acres of land and will create five or more acres of impervious surface.

It also appeared likely that this 9-hole golf course/residential development project would exceed the mandatory EIR threshold pursuant to Section 11.03 (3)(a)(1)(a) of the MEPA regulations because the golf course portion of the project involved the removal of significant amounts of wetlands tree canopy, in addition to the alteration of bordering vegetated wetlands (BVW).

1st Notice of Project Change (NPC1)

The first Notice of Project Change document (NPC1) was submitted to the MEPA Office in June 2002 and proposed to revise the project to eliminate the 9-hole golf course and to construct solely the residential development portion of the project including : 72 units of clustered residential development together with a 4 unit single family subdivision, and a 3,500 lf roadway and associated infrastructure to service the residential development. As a result, the proponent significantly reduced the project's impacts to wetlands, tree canopy alteration, land alteration, and traffic. The Secretary's Certificate on the NPC1 (July 2002) determined that the proposed project did not require further MEPA review and required the proponent consult with NHSEP to develop a satisfactory site survey plan for all rare species habitat located on the site. The Certificate on the NPC1 required the proponent to file an NPC with the MEPA Office for any additional changes to the proposed project or any future development proposals for the undeveloped areas of the site. The proposed NPC1 project received an Order of Conditions from the Westport Conservation Commission for the roadway and stormwater infrastructure elements, which was appealed for a Superseding Order of Conditions (SOC) from MassDEP. In January 2003, MassDEP issued a SOC (SE 80-1121) and a Water Management Act Permit for the construction of 3,500 lf roadway, two wetlands crossings and infrastructure for the project as proposed in the NPC1 submittal.

2nd Notice of Project Change (NPC2)

A second Notice of Project Change (NPC2) was submitted to the MEPA Office in April 2004 and proposed to re-incorporate the construction of a 9-hole golf course with the proponent's residential development project. The proposed 9-hole golf course included a clubhouse, greens keeper's residence and maintenance building. According to the information contained in the NPC2 submittal, the proponent's residential development project was further revised subsequent to the issuance of the Secretary's Certificate on the NPC1, to include a reduction in the total number of residential housing units from 76 to 47 (21 duplex units, 5 detached single family units).

In their comments on the NPC 2 submittal, NHESP indicated that the proponent did not consult with NHESP prior to proceeding with the construction of the 3,500 lf roadway and associated infrastructure to service the project's residential development elements. The roadway construction resulted in a "take" of Four-toed Salamanders and Spotted Turtles. According to NHESP, the 9-hole golf course proposed in the NPC2 submittal would result in an additional "take" of these rare species. NHESP indicated that a Conservation and Management Permit would be required for the completed roadway construction (after-the-fact) pursuant to Massachusetts Endangered Species Act (MESA) permitting requirements (310 CMR 10.23).

NHESP required the proponent to cease any/all additional construction activities within the project site until MESA permitting issues pertaining to the residential development and proposed 9-hole golf course project elements could be resolved. NHESP required the proponent to provide additional information to NHESP to determine the permitability of the proposed 9-hole golf course project. The proponent received an Order of Conditions from the Westport Conservation Commission for the 9-hole golf course, which was appealed for an SOC from MassDEP. According to MassDEP, the SOC (SE 80-1290) for the proposed golf course project element will be withdrawn, pending completion of the MEPA process, in response to the proponent's elimination of the 9-hole golf course element from the project plan.

Alternatives:

The DEIR should include a proposed site design and layout that: 1) avoids any additional alteration of rare species habitat located within the project site; and 2) provides for suitable mitigation for previously altered rare species habitat that may be required pursuant to the Massachusetts Endangered Species Act (MESA). In addition, the DEIR should present any alternatives analyses required by the state permitting processes, in particular the alternatives analysis for rare species required by the Wetlands Protection Act (if applicable) and the alternatives analysis required for Water Quality Certification.

Project Description and Permitting:

The DEIR should include a thorough description of the proposed project and each state permit necessary for the project as proposed, and should demonstrate that the project design meets applicable performance standards. The DEIR should identify the environmental impacts associated with the proponent's previously completed roadway and stormwater management infrastructure construction (NPC1) and the potential environmental impacts anticipated from the currently proposed project. As discussed below, the DEIR should also discuss the potential cumulative infrastructure impacts and site planning issues arising out of the full build-out under current zoning of the remaining 139-acre development parcel (Lot #33). The DEIR should include a reasonably scaled map that clearly delineates the extent of building envelope and future development areas, and areas of the project site that the proponent has proposed to place under a Conservation Restriction (CR) to ensure for their permanent protection. The proponent should consider placing deed restrictions, to include certified vernal pools, if any, and the uplands around them, on any residential properties that will be located within 600 feet of any vernal pools or within the 100-foot wetlands buffer zone as a method for avoiding future impacts from homeowner activities. The DEIR should clearly identify the proposed locations of construction activities and project elements that may be allowed within the project's conservation restriction area including but not limited to water supply wells, Title 5 septic systems, walking trails, roadway construction, and wetlands replication.

The NPC3 submittal describes the residential subdivision project as consisting of a total of 30 building lots with 27 lots to be located along the project's internal roadways, Westport Lake Road and Golf View Lane, and 3 building lots to be located on a portion of the project site abutting Mouse Mill Road. The Conservation Restriction site plan included in the NPC3 submittal depicts a total of 32 building lots. The DEIR should clarify the total number of residential building lots included as part of the proposed project. The DEIR should include an update on the local permitting process, and should discuss how any local requirements impact project design. The DEIR should contain sufficient information for the state permitting agencies to evaluate the project in light of their Section 61 obligations.

Future Development/Segmentation:

Although not discussed in the NPC3 submittal, the Conservation Restriction site plan also depicts an additional 139-acre development parcel (Lot 33) located along the western boundary of the project site. According to additional information provided by the proponent, the proponent has identified Lot #33 for future development. The DEIR should generally describe the development potential of Lot# 33. After considering the factors cited in Section 11.01 of the MEPA regulations, I must consider the environmental impacts associated with the proposed Westport Lakes residential development project and the potential future development of Lot #33 (full build-out project) as a "common plan or undertaking". I am therefore requiring that a Notice of Project Change (NPC) be filed with the MEPA Office for any future development proposal that may be proposed for Lot #33 whether, on its own, it exceeds review thresholds or requires a state agency action. The NPC will need to discuss both the potential cumulative infrastructure and environmental impacts including but not limited to traffic, water supply, wastewater, rare species, wetlands and site planning issues arising out of the development of the proposed Westport Lakes project, and the full-build out (allowable as-of-right under current local zoning) of the Lot #33 development parcel.

Wetlands:

The project as currently designed involves two previously constructed wetlands crossings associated with the construction of the project's internal roadways. According to NHESP's comments on the NPC2 submittal, these proposed wetlands crossings must meet the applicable performance standards under the Wetlands Protection Act. The proposed project will result in the alteration of approximately 3,300 sf of bordering vegetated wetlands (BVW). The proponent has proposed to provide approximately 3,300 sf (1:1) of on-site wetlands replication as mitigation for the project's impacts to wetlands resource areas. The DEIR should identify any proposed wetland replication location(s), and their elevations. The project site also contains two vernal pools (Vernal Pool #1, Vernal Pool #2) that meet NHESP's Guidelines for Vernal Pool Certification. These vernal pool resource areas are to be included within the proponent's proposed 164-acre conservation restriction (CR) area.

Rare Species:

According to the comments previously received from NHESP on the ENF, NPC1 and NPC2 submittals, the project site lies in close proximity to a number of rare wildlife species: Marbled Salamander (*Ambystoma opacum*), Four-toed Salamander (*Hemidactylium scur*), Eastern Box Turtle (*Terrepenne Carolina*), and Mystic Valley Amphipod (*Crangonyx aberrans*). In their comments on this NPC3 submittal, NHESP indicates that the proponent has consulted with NHESP and has proposed a Conservation Restriction Plan designed to meet the MESA permitting requirements. The proposed Conservation Restriction Plan includes:

- the placement of a Conservation Restriction (CR) on approximately 164.2 acres (76%) of the project site to protect wetland resource areas and habitat for the four-toed Salamander,
- a phased funding program (\$119,400.00 total) for habitat protection and/or conservation research to benefit the Four-toed Salamander to be phased in accordance with project construction;
- construction and maintenance of two on-site wildlife road crossings;
- placement of deed restrictions on specific house lots to limit forest clearing; and
- other conditions to be determined during the MESA permitting and review process.

I note that NHESP requested the proponent to provide additional information and documentation in furtherance of NHESP's Conservation and Management Permit review process and the proponent's proposed rare species mitigation commitments. Specifically, NHESP requested the proponent to provide a recordable conservation restriction plan, a finalized conservation restriction document, identification of the conservation restriction Grantee, and homeowner association documents describing the association's monitoring and maintenance responsibilities. The DEIR must respond to NHESP's comments and provide a detailed discussion of the proponent's proposed conservation restriction plan. I strongly encourage the proponent to continue to consult with NHESP in the design and completion of its conservation restriction plan for the proposed Westport Lakes residential subdivision project.

Historic Resources:

In their comments on the NPC3 submittal the Massachusetts Historical Commission (MHC) has indicated that the project site contains the Cornell House and Barn (MHC# WSP.538) a historically significant structure included in MHC's *Inventory of Historic and Archeological Assets of the Commonwealth*, and several other historic structures (Macomber House – WSP .541, Macomber-Chase House – WSP .540, Tripp House WSP .539) located adjacent to the project site. The project area also has high archeological sensitivity and is likely to contain archeologically significant sites associated with Native American occupation of the Dartmouth area.

MHC continues to request that the proponent conduct an intensive (locational) archaeological survey for those areas potentially impacted by the proposed project and report generally on its results in the EIR. The proponent must respond to MHC's comments. The DEIR should include an update of the proponent's archaeological survey activities. I strongly encourage the proponent to consult with the MHC in the design and completion of its archeological investigations for the project.

Transportation:

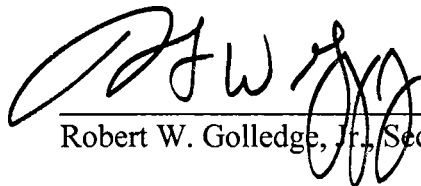
As described in the NPC3 submittal, the primary site access for the proposed project is located on Route 177 (American Legion Highway). Mouse Mill Road will also be used to provide access to the building lots located along the eastern boundary of the project site. In consultation with MassHighway, the proponent has committed to improving access to the project site by providing an additional turn lane for traffic entering the project site. According to the comments received MassHighway, the proponent should provide Transportation Demand Management (TDM) measures to reduce project site trip generation including but not limited to providing on-site bicycle facilities, ensuring safe onsite pedestrian circulation and connections to existing pedestrian and bicycle networks located within the vicinity of the project site, and posting information on the Southeastern Regional Transit Authority's Route 6 bus schedule. The DEIR should respond to MassHighway's comments and should include proposed TDM measures designed to reduce project-generated site trip generation.

Mitigation/ Section 61 Findings:

The DEIR should include a summary and explanation of all environmental mitigation to which the proponent is committed. This chapter on mitigation should include a Draft Section 61 Finding for all state permits. The Draft Section 61 Finding should contain a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation, based on the construction phases of the project, should also be included.

September 22, 2006

Date



Robert W. Golledge, Jr., Secretary

Comments received:

08/28/06 Massachusetts Historical Commission (MHC)
09/12/06 **Natural Heritage and Endangered Species Program (NHESP)**
09/12/06 Massachusetts Department of Environmental Protection (DEP) – SERO
09/12/06 Massachusetts Highway Department (MHD)

RWG/NCZ/ncz
3rd NPC #12703