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December 17, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Westport Lakes
PROJECT MUNICIPALITY : Westport
PROJECT WATERSHED : Buzzards Bay
EOEA NUMBER : 12703
PROJECT PROPONENT : American Links Courses
DATE NOTICED IN MONITOR : November 10, 2008

As Secretary of Energy and Environmental Affairs, I determine that the Final Environmental Impact Report (FEIR) submitted on the above project **adequately and properly** complies with the Massachusetts Environmental Policy Act (MGL, c. 30, ss. 61-621) and with its implementing regulations (301 CMR 11.00).

Project Description

The Proponent proposes to construct a standard residential subdivision consisting of a total of 33 single family houses, approximately 3,500 linear foot (lf) roadway and stormwater infrastructure improvements on a 216-acre site located near the intersection of Route 88 and Route 177 in Westport. As described elsewhere in this Certificate, the roadway and stormwater infrastructure improvements were previously constructed as part of the project activities proposed in the first Notice of Project Change (NPC1) reviewed by the MEPA Office in June 2002. Two additional building lots (Lot # 31, 33) will be located along the project site's Mouse Hill Road frontage. 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 designed in accordance with Massachusetts Title 5 regulations, respectively.

Historic Resources

According to the comments previously received from the Massachusetts Historical Commission (MHC), the project site includes 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*. Several other historic structures (Macomber House – WSP .541, Macomber-Chase House – WSP .540, Tripp House WSP .539) are located in close proximity to the project site and front on Mouse Hill Road. As described in the FEIR document, the Proponent completed an intensive (locational) archaeological survey of the project site in January 2007 and did not identify the presence of significant historic or archaeological resources within the project site. The proponent has proposed to renovate and reuse the Cornell House, and to relocate the barn to an off-site location where restoration could be undertaken by others.

Transportation

The primary project site drive is located on Route 177 (American Legion Highway). Mouse Hill Road will also be used to provide access to 2 the building lots (#31, #33) 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 constructing a Westport Lakes Road/Route 177 intersection and approximately 500 lf of paved shoulder/by-pass lane on the south side of Route 177 opposite the project's site drive. According to the information proved in the FEIR, the proponent has also committed to promoting the use of the Southeastern Regional Transit Authority's (SRTA) Route 6 bus service by posting bus schedules in common areas throughout the project site, and working with the Town of Westport's Council on Aging to identify shuttle service opportunities for the project residents. The proponent should carry forward its commitments from the DEIR submittal and include pedestrian accommodations in the final project design including on-site bicycle facilities and a safe on-site pedestrian circulation plan with project connections to existing pedestrian and bicycle networks located within the vicinity of the project site.

SUMMARY OF FEIR MITIGATION COMMITMENTS

The FEIR includes a summary and explanation of all environmental mitigation to which the proponent is committed. The Proponent has committed to the mitigation measures listed below. All mitigation commitments must be completed prior to project occupancy.

- construct a Westport Lakes Road/Route 177 intersection and approximately 500 lf of paved shoulder/by-pass lane on the south side of Route 177 opposite the project's site drive;

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 concerning the rare species and habitat impacts associated with 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 was withdrawn, pending completion of the MEPA process, in response to the proponent's subsequent decision to submit a NPC to the MEPA Office to eliminate the 9-hole golf course element from the project plan.

3rd Notice of Project Change (NPC3)

In August 2006, the proponent filed a third Notice of Project Change (NPC3) 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 designed in accordance with Massachusetts Title 5 regulations, respectively. The Secretary's Certificate on the NPC3 submittal continued to require the preparation of a DEIR to ensure 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.

Draft Environmental Impact Report

On February 6, 2008, the Proponent submitted a Draft Environmental Impact Report (DEIR) to the MEPA Office which described a proposal to construct a standard residential subdivision consisting of a total of 31 single family houses, approximately 3,500 linear foot (lf) roadway and stormwater infrastructure previously constructed as part of the project activities proposed in the first NPC. The Proponent also proposed a Conservation Restriction that will locate 29 building lots within a 31-acre building envelope. The Secretary's Certificate on the DEIR found the DEIR submittal adequate and required the Proponent to provide additional information in the FEIR specifically pertaining to the project's potential impacts and proposed mitigation for wetlands, rare species, traffic, historic and archaeological resources.

Jurisdiction

The project is undergoing MEPA review pursuant to Sections 11.03 (2)(b)(2) and 11.03 (1)(b)(1) of the MEPA regulations because the project involves the alteration of designated significant habitat of an endangered or threatened species, and the alteration of will more than 25 acres of land and therefore is undergoing MEPA review pursuant to Section of the MEPA regulations. The project requires a Vehicular 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 on appeal only, a Superseding Order from 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 for the proposed construction of roads, houses and utilities within the project site, the Proponent will need to prepare a blast design plan pursuant to the Board of Fire Protection Regulations (577 CMR 13.09). I note that according to MassDEP, blasting mixtures that include perchlorate have been identified as the source of contamination in many Massachusetts public water supplies and thus should be discouraged from use in the project watershed.

The Proponent is not seeking state funding or financial assistance for the proposed project. MEPA jurisdiction therefore is limited to those aspects of the project within the subject matter of any required or potentially required state permits that have the potential to cause significant Damage to the Environment as defined in the MEPA regulations including traffic, wetlands, rare species and water quality.

REVIEW OF THE FEIR

Future Development

The previously submitted DEIR for this project (February 6, 2008) included a conceptual future development plan (Phase II) for a 139-acre development parcel (Lot #33) located in the western portion of the project site. The Proponent proposed a Conservation Restriction to limit the building envelope for Lot #33 to approximately 64 acres. Under current zoning, Lot 33 could be developed to accommodate an additional 40 units of clustered residential housing, approximately 3,000 lf of internal roadway, a community club house building and related utilities and stormwater management infrastructure. According to the information provided in the FEIR, the project design has been modified to eliminate the Phase II development plan for Lot #33 and to incorporate its development within the Proponent's Phase I development program as a 139-acre single-family estate-style lot. Access to this estate lot will be provided via a driveway to be constructed beginning at the end of the proposed Golf View Lane cul-de-sac. Should the proposal for the development of Lot #33 change as future plans for the site evolve, the Proponent will need to file a Notice of Project Change (NPC) with the MEPA Office.

Project History

As 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. The Secretary's Certificate on the ENF (March 2002) required the proponent to prepare an Environmental Impact 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 and 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 would create five or more acres of impervious surface. It also appeared likely that the 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 only 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 change did not require further MEPA review, but required the proponent to consult with NHESP to develop a satisfactory site survey plan for all rare species habitat located on the site. The Certificate on the NPC1 also 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 of 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. As described 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).

The NPC will need to discuss the potential cumulative infrastructure and environmental impacts associated with all development activities within the project site, including but not limited to traffic, water supply, wastewater, rare species, wetlands and site planning issues.

Wetlands

The project involves two previously constructed wetlands crossings associated with the project's main internal roadway (Westport Lakes Road) which extends 3,000 lf north from Route 177 to a cul-de-sac located in the center of the project site. According to the information provided in the FEIR document, the construction of Westport Lakes Road resulted in the total alteration of approximately 3,300 sf of bordering vegetated wetlands (BVW).

A Superseding Order of Conditions (SOC) was issued by MassDEP in January 2003 and incorporated the Proponent's commitment to construct approximately 11,000 sf of on-site wetlands replication at a ratio of 3.3:1. As described in the FEIR, the Proponent is now proposing to reduce the amount of wetlands replication to offset the project's reduced impacts to BVW resources. In consultation with MassDEP, the Proponent has committed to provide approximately 5,000 sf (1.5:1) of on-site wetlands replication to be located adjacent to Lots 17, 18 and 19) as mitigation for the project's impacts to wetlands resource areas. 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 located within the Proponent's proposed 139-acre single-family estate style lot. I strongly encourage the proponent to consider placing deed restrictions on the single-family estate style lot to include certified vernal pools and the uplands around them, and on any individual residential property that may 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.

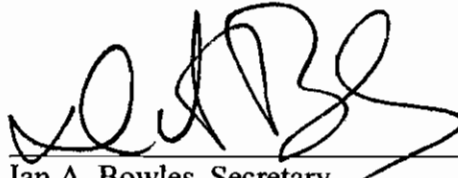
Rare Species

According to the comments received from NHESP on prior submittals to the MEPA Office for this project, 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 (*Terrepena Carolina*), and Mystic Valley Amphipod (*Crangonyx aberrans*). As described in the FEIR, new habitat maps were issued by NHESP for the project site and adjacent land area in October 2008. In its comments on the FEIR, NHESP has indicated that the project site no longer contains Estimated or Priority Habitat areas. Accordingly, the current project design presented in the FEIR no longer includes the previously proposed Conservation Restriction for the 139-acre development parcel located in the western portion of the project site which was intended to serve as mitigation for impacts to rare species.

- promote the use of the Southeastern Regional Transit Authority's (SRTA) Route 6 bus service by posting bus schedules in common areas throughout the project site; and,
- work with the Town of Westport's Council on Aging to identify shuttle service opportunities for the project residents.

Based on the review of the FEIR, additional information provided by the Proponent to the MEPA Office, and the comments received, I am satisfied that the FEIR meets the standard for adequacy contained in Section 11.06 of the MEPA regulations. The project may proceed to state permitting.

December 17, 2008
DATE



Ian A. Bowles, Secretary

Comments received:

11/20/08 Natural Heritage and Endangered Species Program (NHESP)
12/10/08 Massachusetts Department of Environmental Protection (MassDEP) – SERO

IAB/NCZ/ncz
FEIR #12703