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December 22, 2006

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

PROJECT NAME : Summer Woods
PROJECT MUNICIPALITY : Harwich
PROJECT WATERSHED : Massachusetts South Coastal
EOEA NUMBER : 13917
PROJECT PROPONENT : Harwich One L.L.C.
DATE NOTICED IN MONITOR : November 22, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report.

As described in the Environmental Notification Form (ENF), the project involves the development under the state's affordable housing law (MGL Ch. 40B) of a housing subdivision that will create 32 homes located on a 39.5-acre site. As approved, twenty-five percent of the units, or eight homes, will be restricted as affordable housing ownership units. The project site is located partially within the Pleasant Bay Area of Critical Environmental Concern (ACEC) and is located approximately 1.25 miles east of the East Harwich Village Center at Routes 39 and 137. The development will not directly impact wetland resource areas or their buffer zones located on the subject property. There are three private drinking water wells located to the south of the property and one potential public water supply located to the northwest of the property. The ACEC boundary in this area follows the 100-foot wetlands Buffer Zone and includes a portion of the eastern side of the property.

A number of commenters state their opposition to the project, and several asked that I deny the project on environmental grounds. I do not have the authority to deny the project. MEPA is not a permitting process. Rather, it is a process designed to ensure public participation in the state environmental permitting process, and to ensure that state permitting agencies have adequate information on which to base their permit decisions. The MEPA process is meant to ensure that potential environmental impacts are described fully and avoided, minimized, and mitigated to the maximum feasible extent. I strongly encourage the proponent to work with residents and state and local officials as this project develops.

The project is undergoing review pursuant to Section 11.03 (11)(b) and Section 11.03 (2)(b)(2) of the MEPA regulations, because the project is located within a designated Area of Critical Environmental Concern (ACEC) and may involve the "taking" of a state-listed rare species on a project site greater than two acres that contains an area mapped as rare species habitat. The project requires a Shared Septic System Permit from the Department of Environmental Protection (MassDEP). If the project results in the "take" of rare species the project will require a Conservation and Management Permit (321 CMR 10.04(3)(b)) from the Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program (NHESP). The project must also comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site. The project required a Comprehensive Permit from the Town of Harwich's Board of Appeals pursuant to M.G.L. Chapter 40B (and hence an approval from the Massachusetts Housing Appeals Committee in the event of an appeal of the local Comprehensive Permit).

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 cause significant Damage to the Environment and that are within the subject matter of the required state permit. In addition, if the Comprehensive Permit is appealed, the proponent would need to seek approval from the Massachusetts Housing Appeals Committee, which would also extend MEPA jurisdiction to all aspects of the project that may cause significant Damage to the Environment.

NHESP has determined that the proposed project is located within Priority Habitat and Estimated Habitat of Rare Species as indicated in the 12th Edition of the Massachusetts Natural Heritage Atlas. The area has been mapped as habitat for Eastern Box Turtles (*Terrepepe Carolina*). Eastern Box Turtle is a state-listed as "Special Concern" pursuant to the provisions of the Massachusetts Endangered Species Act (MESA) (MGL c131A) and its implementing regulations (321 CMR 10.00).

Based upon a review of the information that has been provided in the ENF, and the information contained in the NHESP's database, it appears to NHESP that this project as currently proposed will result in a probable "take" Eastern Box Turtles. MESA establishes rules and prohibitions governing the take of state-protected species (310 CMR 10.04). A "take" of an animal is defined in the MESA regulations to include activities that will harm, kill, or disrupt the

nesting, breeding, feeding or migratory activity of state-listed species. Therefore, the project may have to be redesigned to avoid or minimize impacts to state-listed species and their habitats, and state-listed species mitigation as required by the MESA. The project must also be designed to meet the relevant state-listed species permitting standards within the Wetlands Protection Act (310 CMR 10.00).

I advise the proponent to immediately contact the NHESP and file for review pursuant to 321 CMR 10.18 directly with the NHESP. I note that no work should be conducted at the project site until the NHESP has completed its review pursuant to the MESA. The filing should include an Eastern Box Turtle habitat assessment conducted by a qualified wildlife biologist with extensive field experience with this species. The habitat assessment must comply with the NHESP guidance document entitled "Endangered Species Habitat Assessment Guidelines: Wildlife". Field surveys for Eastern Box Turtles may also be necessary as part of the MESA review process to determine the extent and/or configuration of development that could be permitted on the site. I note that projects or activities that result in the "take" of rare species must meet the permitting standards for a Conservation and Management Permit (321 CMR 10.04(3)(b)). Projects that meet these permitting standards may be eligible for a permit at the discretion of the Director of the Division of Fisheries of Wildlife.

The proposed project site is located partially within the Pleasant Bay ACEC. The 9,240-acre Pleasant Bay ACEC contains over 1,000 acres of salt marsh, several hundred acres of tidal flats, salt and freshwater ponds, rivers, bays, and barrier beaches. These public interests are also defined in and protected under the Wetlands Protection Act (MGL c. 131, s. 40; 310 CMR 10.00). The proponent proposes the treatment of approximately 9,900 gpd onsite wastewater treatment facility. The wastewater treatment area is proposed to be located in the eastern most portion of the site, adjacent to but just outside the 100-foot buffer to wetland resource areas and the Pleasant Bay ACEC boundary. The proponent stated at the site visit that he was advised to place the onsite wastewater treatment facility in specific location by the Town of Harwich Water Commissioner. I note the close proximity of the proposed leaching area (and reserve leaching area) to the sensitive resources, the designated Outstanding Resource Waters, downstream fisheries, and the critical species habitat of the downstream ACEC. I note that the ACEC program recommends that an alternative location be considered for the facility. Although the proponent has stated that the Town has recommended this location, I advise the proponent to work closely with the ACEC Program and MassDEP to consider relocating the onsite wastewater treatment facility.

MassDEP has stated in their comment that the wastewater system is expected to be designed to meet or exceed all regulations and policies in effect related to nitrogen loading at this time. MassDEP refers to a nitrogen output limit of no more than 5 parts per million (ppm) over the entire site based upon a series of formulas created by the Cape Cod Commission. The proponent should work closely with MassDEP to ensure that the wastewater system will not exceed nitrogen loading. MassDEP has advised that the wastewater system has been designed as

if the system was being installed in a wellhead protection (Zone II) area. The site currently is not in a Zone II area.

Because the project is located partially within the Pleasant Bay ACEC the standards of MassDEP's Stormwater Management Policy should be met due to the sensitive nature of the surrounding natural resources and public drinking water resources. I also strongly recommend the proponent implement Low Impact Development Techniques such as vegetated swales, bioretention areas, and pervious pavement to achieve a higher level of stormwater management and provide protection to the surrounding sensitive resources. The proponent should work with MassDEP to design and implement a stormwater management system.

The project will not include a public water supply. Water service to the 32-lot subdivision will be provided by the local community. MassDEP has advised me that the site is also located outside an established wellhead protection areas (Zone II) for wells located in both Harwich and Chatham. However, I note that there is a potential for the development and installation of a new source of drinking water supply by the Town of Harwich Water Department. This potential future well site is located between 1000 and 1500 feet from the subject development site. A Zone II area for this future well may encompass the proposed housing site.

MassDEP has reviewed the conceptual design of the proposed project and determined that the project does not propose work within the geographic jurisdiction of the Wetlands Protection Act. Therefore, no Order of Conditions is required based on the preliminary design. Chapter 91 and Water Quality Certificate review are also not required. However, the resource area delineations have not been reviewed or confirmed by the Town of Harwich Conservation Commission. Some areas of grading are proposed very near the limit of the Buffer Zone to Bordering Vegetated Wetlands as shown on the plan. If the resource area boundaries change, the proponent should contact the MEPA office for possible further review.

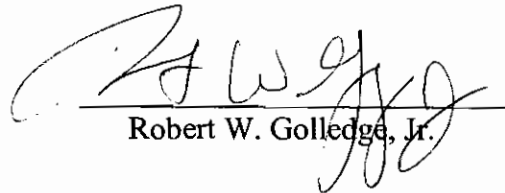
The Massachusetts Historical Commission (MHC) review of the Inventory of Historic and Archaeological Assets of the Commonwealth indicates that portions of the project area are within the Monomoyick Area. The project area is also adjacent to multiple ancient and historic period archaeological sites, as well as one inventoried historic structure. MHC, therefore, indicates that the site warrants an intensive (locational) survey (950 CMR 70). I advise the proponent to consult with MHC to discuss in detail the archaeological survey.

I remind the proponent that approval from the Department of Environmental Protection (DEP) is required for the Title 5 Shared Systems that are proposed for this subdivision. All shared systems require both MassDEP review and approval (BRP WP 58b). I advise the proponent to contact MassDEP and the local Board of Health to begin this process. In addition, the proponent must demonstrate and document to MassDEP where the water supply comes from for the proposed project. The documentation should include information on the complete and separate ownership or proposed ownership of each individual lot.

I conclude that no further MEPA review is required. If the project design undergoes a material change as a result of requirements imposed by the state permitting agencies, the proponent should file a timely Notice of Project Change that addresses impacts and mitigation.

December 22, 2006

Date



Robert W. Golledge, Jr.

Comments received:

12/14/06	Senator Robert O'Leary
11/30/06	Massachusetts Historical Commission
12/01/06	Harwich Natural Resources Department
12/06/06	Division of Fisheries & Wildlife's NHESP
12/11/06	Friends of Pleasant Bay
12/12/06	The Compact of Cape Cod Conservation Trusts
12/12/06	Department of Environmental Protection, SERO
12/12/06	Division of Marine Fisheries
12.12/06	ENSR, Donald Schall
12/12/06	East Harwich Community Association
12/12/06	McGregor & Associates
12/12/06	Bernkopf & Goodman, LLP
12/12/06	Wright-Pierce on behalf of East Harwich Community Association
12/13/06	Pleasant Bay Resource Management Alliance
12/14/06	Town of Harwich Planning Association
12/14/06	Cape Cod Commission
12/19/06	DCR's Area of Critical Environmental Concern Program

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