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May 9, 2005

DRAFT RECORD OF DECISION

PROJECT NAME: Ames Run Cluster Subdivision
PROJECT MUNICIPALITY: Tewksbury
PROJECT WATERSHED: Shawsheen/Merrimack
EOEA NUMBER: 13493
PROJECT PROPONENT: Ames Hill Development, LLC
DATE NOTICED IN MONITOR: April 9, 2005

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed this project and **propose to grant a Phase I Waiver** (as defined below), allowing the commencement of the first phase of the project prior to completion of the Environmental Impact Report (EIR) for the entire project. A Certificate with the Scope for the EIR has been issued separately.

Project Description

As described in the Environmental Notification Form, the project is a proposed 87-lot single-family, residential cluster subdivision adjacent to Ames Pond in Tewksbury, MA. The overall parcel is approximately 198 acres, consisting of approximately 76 acres in pond surface area, approximately 113 acres of wooded uplands, and approximately 9 acres of Bordering Vegetated Wetlands (BVW). The project is proposed to be constructed in two phases: Phase I will consist of 50 lots on two cul-de-sac streets, one off North Street (proposed Prospect Hill Road) and the other an extension of the existing Catamount Road; Phase II will contain the remaining 37 lots on a cul-de-sac extension of the existing Overlook Drive. The proponent has received approval from the Tewksbury Planning Board for Phase I of the project, and is currently working with a Planning Board subcommittee to consider permitting options for Phase II.

Jurisdiction

The project is subject to a mandatory Environmental Impact Report (EIR) and is undergoing review pursuant to Section 11.03 (1)(a)(2), Section 11.03 (1)(b)(1) and Section 11.03(5)(b)(3)(c) of the MEPA regulations because it requires state permits and will result in the creation of ten or more acres of impervious surface (10.43 acres) and the direct alteration of more than 25 acres of land (36.35 acres), and because the project proposes the construction of new sewer mains ½ or more miles in length that are not located in the right of way of existing roadways (1.38 miles). The project will also result in the filling of 4,900 square feet of BVW; the generation of 517 new daily vehicle trips; the generation of 38,280 gallons per day (gpd) of wastewater; and require the withdrawal of 38,280 gpd of drinking water. All residences will be serviced by extensions of the municipal water and sewer lines. The project will require a NPDES Construction General Permit; a Sewer Extension Permit from the Department of Environmental Protection (DEP); a Cluster Subdivision Special Permit from the Tewksbury Planning Board; and an Order of Conditions from the Tewksbury Conservation Commission.

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required permits with the potential to cause Damage to the Environment. In this case, MEPA jurisdiction extends to land alteration, stormwater and wastewater.

Waiver Request

On April 12, 2005 the proponent requested that I grant a Waiver to allow Phase I of the project to proceed prior to completion of the EIR. The proponent is requesting a Phase I Waiver for construction of a 50 lots cluster subdivision and associated infrastructure. Phase I will result in 22.94 acres land alteration and the creation of 5.4 acres of impervious area.

Criteria for a Phase I Waiver

Section 11.11 of the MEPA Regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: a) result in undue hardship to the proponent, unless based on delay in compliance by the proponent; and b) not serve to minimize or avoid damage to the environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to Phase I of the project prior to preparing an EIR, this finding shall be based on one or more of the following circumstances: 1) the potential environmental impacts of Phase I are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase I; 3) the project is severable, such that Phase I does not require the implementation of any other future phases; and 4) the agency action on Phase I will contain conditions that ensure due compliance with MEPA.

Findings:

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

1. The applicant has received permits from the local Planning Board and Conservation Commission for Phase I of the project. Information provided in the ENF on Phase II of the project shows the "by-right" lot density afforded under the Tewksbury Zoning Bylaw. The proponent is currently involved in discussions with the Planning Board and the Town's Zoning Subcommittee to determine if flexible opportunities for diverse housing alternatives exist on the Phase II site.
2. Stormwater runoff will be captured by a closed drainage system, and will be routed through mechanical separators and stormwater detention ponds before being discharged to the adjacent wetlands. The proponent is responsible for the operation and maintenance of these facilities. The proponent must ensure that the proposed system is consistent with the best management practices of the Department of Environmental Protection's Stormwater Management Policy to minimize direct and indirect impacts during and after construction.
3. Ample and unconstrained infrastructure currently exist to support Phase I.
4. The project is severable. Construction of Phase I does not require the completion of Phase II.
5. The proponent must submit an EIR addressing the stormwater, land alteration and wastewater impacts of the entire project and propose appropriate mitigation.

Based on these findings, it is my judgment that the Waiver request has merit and meets the tests established in Section 11.11 of the MEPA regulations. Therefore, I propose to grant the Waiver for Phase I of this project, subject to the above findings. This Draft Record of Decision shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the Waiver.

May 9, 2005

DATE


 Ellen Roy Herzfelder, Secretary

Comments Received:

4/1/2005 Michelle Lee
 4/1/2005 Pat Shanley
 4/11/2005 Keri Barry

4/11/2005 Michelle Lee
4/11/2005 Jim & Susan Duffy
4/11/2005 Sandra Campo
4/11/2005 Town of Tewksbury, Department of Community Development
4/12/2005 Town of Tewksbury, Office of the Town Manager
4/12/2005 Marc Paquette, Cuoco & Cormier Engineering Associates, Inc.
4/22/2005 Northern Middlesex Council of Governments
4/29/2005 Department of Environmental Protection, Northeast Regional Office

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