



# The Commonwealth of Massachusetts

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December 30, 2004

## DRAFT RECORD OF DECISION

PROJECT NAME	: Fruit Street Master Plan
PROJECT MUNICIPALITY	: Hopkinton
PROJECT WATERSHED	: SuAsCo
EOEA NUMBER	: 13092
PROJECT PROPONENT	: Town of Hopkinton
DATE NOTICED IN MONITOR	: November 23, 2004

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 hereby grant a Phase I Waiver (as defined below), allowing the commencement of the first phase of the project prior to completion of the Supplemental Single Environmental Impact Report (SEIR) for the entire project. A Certificate with the Scope for the Supplemental SEIR has been issued separately.

### Special Review Procedure

A Special Review Procedure (SRP) was established for the review of the Fruit Street Master Plan (SRP Certificate, September 22, 2003). The SRP established an EIR process that consists of the filing of a Single Master Plan EIR and subsequent filings of a series of Notices of Project Change (NPC) to provide a more detailed level of analysis for specific project elements.

### Project Description

As described in the SEIR, the proposed project involves phased development of a 257-acre site off Fruit Street purchased by the Town of Hopkinton and previously proposed for a golf course (EOEA #12542). The Town's Master Plan for the Fruit Street development includes an elementary school (20 acres), a DPW facility (9 acres), affordable housing (13 acres), senior housing (28 acres), recreation fields and associated facilities including wastewater treatment and disposal areas (26 acres), other wastewater disposal (5 acres) and access roads (7 acres). Approximately 108 acres of the site is proposed for development and the remaining 149 acres will be kept as open space, the majority of which will be permanently protected under a

Conservation Restriction. The proposed Master Plan also includes development of a public water supply well, an irrigation well and infrastructure associated with wastewater treatment and discharge to land.

### Jurisdiction

The project is undergoing environmental review and requires the preparation of a mandatory EIR pursuant to Sections 11.03(1)(a) 1. and 2. of the MEPA regulations because it involves alteration of 50 acres or more of land and creation of 10 acres of more of impervious area, and Section 11.03 (4)(a) because of potential withdrawal of 1,500,000 or more gallons per day (gpd) from a groundwater source. The SEIR now proposes 500,000 gpd withdrawal that exceeds the ENF threshold of 100,000 or more gpd from a water source requiring new construction for the withdrawal. The project as proposed in the SEIR also meets the ENF thresholds for wastewater disposal, rare species, traffic and parking.

The project will require a Water Management Act Permit, New Source Approval, a Groundwater Discharge Permit, and a Sewer Extension Permit from the Department of Environmental Protection (DEP). The site will require a site assignment and a public hearing in accordance with MGL Chapter 83, Section 6. A Conservation and Management Permit from the Division of Fisheries and Wildlife will also be required. The project may also require an Order of Conditions from the Town of Hopkinton Conservation Commission (and, on appeal only, a superseding Order from DEP).

The proponent may seek financial assistance from the Commonwealth for the project. MEPA jurisdiction therefore extends to all aspects of the project that may cause significant Damage to the Environment as defined in the MEPA statute<sup>1</sup>.

### Waiver Request

In the Final Record of Decision (FROD) dated October 24, 2003, I granted a partial Phase I Waiver to allow the proponent to proceed with placement of a Conservation Restriction (CR) on 116 acres of the project site. The CR is currently under development for a proposed 145 acres. I also allowed the permitting agencies to issue any permits for data collection purposes only on the Fruit Street site prior to submission of the EIRs for either the Fruit Street Master Plan or those portions of the water resources management plan involving the Fruit Street site.

In the FROD, I denied the proponent's request for a waiver to develop recreational fields and associated infrastructure. The denial of the waiver request was based on a lack of information and I noted in the FROD that if the proponent developed and submitted the

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<sup>1</sup> In the event that the proponent does not seek financial assistance from the Commonwealth for the project, MEPA jurisdiction would extend to the subject matter of required or potentially required state permits or Agency Actions. Given the broad subject matter of the permits required, most of the potential impacts would likely fall within MEPA jurisdiction.

additional information requested by the Department of Environmental Protection (DEP), Division of Fisheries and Wildlife (DFW) and the Town of Hopkinton Conservation Commission, I would reconsider the waiver request. The proponent has submitted additional information and is requesting a Phase I waiver request for the following project elements: 1) improving a gravel access road for public access to the site, 2) construction of athletic fields with associated irrigation well and possible installation of subsurface components of a portion of the wastewater treatment and disposal facility (in Area E4 proposed for future athletic fields), 3) removal of existing buildings, pavement and underground storage tanks (USTs) from the Zone I of off-site wells, and 4) drainage improvements to the portion of Fruit Street located in the Zone I of off-site public drinking water supply wells. The proponent has consulted with DEP and DFW and they support the granting of the Phase I Waiver.

#### 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 determine that:

1. Since the filing of the ENF, the proponent has worked with the DFW Natural Heritage and Endangered Species Program (NHESP) to establish a Memorandum of Agreement (MOA, June 1, 2004) and develop a Conservation Restriction to mitigate project effects on lands designated as Estimated Habitats of Rare Wildlife and Priority Habitats of Rare Species.
2. NHESP has agreed to support the approval of a Phase I Waiver and completion of Phase I construction by the Town in consultation with NHESP and in accordance with stipulations of the MOA, while a Conservation Permit Application Package is being developed. As a condition of

this Phase I Waiver, I require the Town to consult with NHESP during Phase I and ensure that all Phase I activities are in compliance with the stipulations of the MOA between the Town of Hopkinton and DFW.

3. The proponent has committed to mitigation measures during construction and operation of Phase I areas to protect wetland resource areas, rare species and their wildlife habitat. Mitigation measures include an erosion and sedimentation control plan and a construction sequencing plan to be submitted to DFW for review and comment 30 days prior to the commencement of field grading and earthwork.
4. Since the filing of the ENF, the proponent has consulted with DEP regarding planning and evaluation of alternative sites for wastewater treatment and disposal and conducted an alternatives analysis as part of the Town's Comprehensive Wastewater Management Plan (CWMP, EOE # 12654). DEP has determined that the recreational field development will not preclude future wastewater treatment and disposal on site, and DEP supports integration of wastewater discharge to land as part of the recreational complex design. As a condition of the Phase I Waiver, and prior to leach field construction, the proponent is required to consult with DEP and the Town of Hopkinton Board of Health regarding the mounding analysis of proposed discharge and the elevation of proposed recreational fields.
5. Phase I does not include proposed buildings for restroom and concession facilities.
6. The proponent shall investigate alternative parking lot surfaces and avoid and reduce creation of impervious surface where feasible for the parking facilities associated with recreational field development.
7. The proponent has committed to the application of environmentally-sound management principles during establishment and maintenance of the recreational fields. Turfgrass Management will include the use Integrated Pest Management (IPM) and other Best Management Practices to avoid or minimize potential adverse impacts from fertilizer, pesticides, herbicides and other chemical controls. The proponent has committed to the use of drought-tolerant grasses and other measures to minimize irrigation needs.
8. Phase I minor upgrading to the gravel access road for temporary public access to the recreational fields will have minimal impacts.
9. Phase I proposed drainage improvements to the portion of Fruit Street located in the Zone I of off-site public water supply wells will provide environmental benefits.
10. Phase I removal of USTs, existing buildings and pavement from Zone I of off-site wells will provide environmental benefits.

11. As a condition of the Phase I Waiver, the proponent is required to design the proposed irrigation well, for a withdrawal of approximately 1,100 gpd, to avoid any short or long-term adverse effects to resource area rare species habitat protected pursuant to the provisions of MA Wetland Protection Act Regulations (310 CMR 10.58 (4)(b) & 10.59). Water withdrawal must also be designed to avoid changes to water quality and hydrology that would adversely affect Spotted Turtle habitat associated with Whitehall Brook and other wetlands in the vicinity of the proposed project. The proponent should consult with DEP, NHESP, and the Town of Hopkinton Conservation Commission and Board of Health regarding the proposed irrigation well.

12. Further evaluation of the irrigation well, including potential cumulative impacts of proposed water supply well and irrigation well, shall be conducted in accordance with the Certificate and Scope for the Supplemental SEIR.

13. Ample and unconstrained infrastructure currently exist to support Phase I. The Phase I recreational fields will be served by portable toilets and will not require sewer lines, on-site wastewater treatment and disposal or on-site drinking water supply. Water use for irrigation will be minimal. A pre-existing gravel road will be improved and used for access to the recreational fields, therefore no new road infrastructure will be required for Phase I.

14. The project is severable. Construction of Phase I does not require completion of Phase II. However, I note that the Town of Hopkinton proceeds at its own risk regarding possible installation of subsurface infrastructure for wastewater disposal at the site of proposed recreational fields. The location and size of subsurface infrastructure shall not necessarily dictate the ultimate location of wastewater discharge to land, nor imply a prejudgment as to whether wastewater disposal is appropriate at the site.

15. The proponent must submit a Supplemental SEIR addressing alternatives, cumulative impacts and other issues in accordance with the Scope in the Certificate on the SEIR.

Based on these findings, I confirm that the waiver request has merit and meets the tests established in Section 11.11. Therefore, the waiver requested for this project is granted, subject to the above findings.

December 30, 2004

DATE

Ellen Roy Herzfelder, Secretary

## Comments received on the SEIR (continues on next page):

11/24/04 Town of Hopkinton, School Committee  
12/03/04 Town of Hopkinton, Office of the Selectmen  
12/07/04 Frederick S. White  
12/08/04 Lee W. Bailey  
12/10/04 Deborah A. and Robert A. Faulconer  
12/13/04 Town of Hopkinton, Parks and Recreation  
12/13/04 Patricia Weiner  
12/13/04 Jason and Laurie Fromer  
12/14/04 Karen A. Webb  
12/16/04 Jonathan Chason  
12/16/04 Town of Hopkinton, Planning Board  
12/16/04 Mary E. Harrington  
12/16/04 Calvin A. Webb  
12/20/04 David Lee and Associates  
12/20/04 Kevin Joyce  
12/21/04 Massachusetts Historical Commission  
12/21/04 Town of Hopkinton Housing Committee  
12/21/04 Water Supply Citizen's Advisory Committee  
12/22/04 Conservation Law Foundation  
12/22/04 Town of Hopkinton, Board of Health  
12/22/04 Town of Hopkinton, Conservation Commission  
12/22/04 Sudbury River Watershed Organization  
12/22/04 Division of Fisheries and Wildlife,  
The Natural Heritage and Endangered Species Program  
12/22/04 Carol DeVeuve  
12/22/04 Robert P. Thornton  
12/22/04 Mary C. Pratt  
12/22/04 Donna and Steven Spector  
12/23/04 Metropolitan Area Planning Council  
12/23/04 Kevin G. Kohrt  
12/27/04 Department of Environmental Protection, Central Regional Office  
12/28/04 Commonwealth of Massachusetts, Riverways Program  
12/28/04 Clean Water Action  
12/28/04 Cedar Swamp conservation Trust (CSCT)  
12/28/04 Brendan C. Dalton