



# *The Commonwealth of Massachusetts*

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January 22, 2007

## DRAFT RECORD OF DECISION

PROJECT NAME :Christina Estates  
PROJECT MUNICIPALITY :North Attleborough  
PROJECT WATERSHED :Blackstone  
EOEA NUMBER :13709  
PROJECT PROPONENT :Cumberland Associates Realty Trust  
DATE NOTICED IN MONITOR :January 11, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I hereby propose to **grant** a Phase I Waiver to allow an initial phase of the project to proceed, pending the preparation of a Draft Environmental Impact Report (DEIR) for the project.

### Project History

The proponent submitted an Environmental Notification Form (ENF) in January 2006 for the development of a 110 unit residential subdivision, including 110 surface parking spaces, approximately 10,000 linear feet (lf) of roadway with sidewalks, and associated utilities and stormwater management infrastructure including 4 stormwater detention basins, on a 102 acre site in North Attleborough. A Secretary's Certificate was issued on March 10, 2006 requiring the proponent to complete the preparation of a Draft and Final Environmental Impact Report (DEIR, FEIR) for the proposed project.

### Phase I Waiver Request

Pursuant to Section 11.11 of the MEPA Regulations, the proponent is requesting a Phase I Waiver to construct approximately a portion of the proposed residential subdivision project including 18 individual house lots (#s7-22, 25, 26), 2,000 lf of site drive and internal roadway, approximately 630 lf of water main and approximately 4,650 lf of sewer pipe within a 16.2-acre portion of the 102-acre project site located off Cumberland Avenue in North Attleborough.

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.

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 an undue hardship for the proponent, unless based on delay in compliance by the proponent; and (b) not serve to avoid or minimize Damage to the Environment. In the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with phase one of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

1. the potential impacts of phase one of the project, taken alone, are insignificant;
2. ample and unconstrained infrastructure facilities and services exist to support phase one of the project;
3. the project is severable, such that phase one does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; and
4. the agency action on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

### Findings

I have carefully reviewed the Phase I Waiver Request, supporting documentation, and written comments.

1. As described by the proponent, this phase of the Christina Estates project will involve the one wetland crossing and will impact approximately 4,450 sf Bordering Vegetated Wetlands (BVW). The proponent has proposed to construct a 9715 sq. ft. wetlands replication area (2:1) to be located in the northeast corner of the project site. MassDEP has requested that the project proponent submit to MassDEP the specific details outlined in Appendix 3 Replication Checklist found in the Massachusetts Inland Wetland Replication Guidelines prior to the issuance of a Phase 1 Waiver.

As a condition of my approval of the Phase I Waiver Request, I am requiring the proponent to submit to MassDEP a detailed wetlands replication plan prior to the commencement of any Phase I construction activities.

2. In their comments on the NPC submittal, the Natural Heritage and Endangered Species Program (NHESP) indicated that the project site is located within Priority Habitat for the Tiny-flowered Buttercup (*Ranunculus micranthus*). The proponent has agreed to permanently protect this Priority Habitat area by placing a conservation restriction (CR) on approximately 9.74-acres of the project site containing rare plant species habitat during and after project construction. NHESP has recommended that the proponent implement a number of conditions prior to the commencement of the Phase I construction activities to avoid impacts to priority habitat during the construction of Phase I including; the installation and maintenance of permanent markers and visual barriers along the boundaries of proposed open space areas, and the implementation of a Conservation Restriction or Deed Restriction of those portions of the Phase I project area included within the proponent's proposed CR area. I adopt these comments as my own and hereby condition my approval of the proponent's Phase I Waiver Request accordingly.
  3. According to the comments received from MHC, the project area contains two ancient Native American archaeological sites, Cushman I and II, that may meet the Criteria of Eligibility for listing in the National Register of Historic Places pursuant to 36 CFR Part 60. According to MHC, the proposed Phase I construction activities will not affect these two significant Native American archaeological sites.
  4. The project will involve construction of approximately 630 lf of water main and approximately 4,650 lf of sewer pipe. According to the information provided in the NPC submittal, the Town of North Attleborough has sufficient water supply and sewer capacity to serve the proposed Phase I project. The DEIR to be submitted for the Christina Estates project must demonstrate that Town of North Attleborough's sewer conveyance system has the capacity to accommodate the additional wastewater flows from the project, and that these additional flows can be accommodated within the total volume of wastewater flow allowed to the Town of North Attleborough under the existing inter-municipal agreement (IMA) with the City of Attleboro for treatment of the North Attleborough's wastewater flows at the Attleboro's WWTF.
  5. According to the proponent, the project has been designed to meet DEP's Stormwater Management Policy standards and practices. The proponent will need to employ appropriate erosion and sedimentation control measures during project construction.
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6. The project will require a Sewer Extension Permit from the Department of Environmental Protection (MassDEP). I anticipate that MassDEP's permit review process will contain terms such as a condition or restriction so as to ensure due compliance with MEPA and 301 CMR 11.00.

Based on these findings, it is my judgment that the phase one waiver request does have merit, does meet the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the Phase I Waiver subject to the aforementioned findings and conditions. This Draft Record of Decision (DROD) 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.

January 22, 2007

DATE

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Ian A. Bowles, Secretary

Comments received:

01/11/07	Massachusetts Historical Commission (MHC)
01/12/07	Massachusetts Department of Environmental Protection (MassDEP) – SERO
01/16/07	Natural Heritage and Endangered Species Program (NHESP)

DROD #13709 – Christina Estates  
IAB/NCZ/ncz

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