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January 29, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME: Osborne Hills
PROJECT MUNICIPALITY: Salem
PROJECT WATERSHED: North Coastal
EOEA NUMBER: 13865
PROJECT PROPONENT: Osborne Hills Realty Trust
DATE NOTICED IN MONITOR: December 23, 2006

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted for this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). The proponent has addressed the substantive issues outlined in the scope and there are no substantive issues that remain to be addressed in a Final EIR. Therefore, I am allowing the DEIR to be reviewed as a Final EIR in accordance with 301 CMR 11.08(8)(b)(2).

Project Description

As described in the DEIR, the project proposes a residential cluster subdivision of 131 single family homes on a 162-acre site in Salem, MA. The project site is located in northwest Salem adjacent to the Peabody municipal line. An approximately 250 foot wide New England Power transmission line easement bisects the project site in an east-west direction. Strongwater Brook originates on the site and flows to the east. An Outstanding Resource Water (ORW) to a public water supply is located in the northwest corner of the property. The development will emphasize the open space and wetland values of the site. Average lot size for the homes is ½ an acre and every home borders on dedicated open space. Approximately 96 acres of the project site will be permanently protected open space. Over a mile of a low impact publicly accessible trail

network designed for passive recreational uses will be constructed to link the site's open space elements.

The project will be constructed in ten phases. Phase 1 includes 19 homes, together with all roads, utilities, stormwater management system components and wetland mitigation areas for the entire project. Phase 1 completion is anticipated in 2007. Phases 2 through 10 are the build-out of the remaining homes, and will not proceed until MEPA review has completed and until the Salem Conservation Commission has issued a Certificate of Compliance for Phase 1. The proponent plans to commence construction on Phase 2 in June of 2008 and on the last Phase of the project in October of 2013.

Wastewater from the project will be conveyed via the Salem municipal system to the South Essex Sewage District for treatment. Wastewater from the first 19 homes will flow via gravity to a connection with the Salem sewer in Marlborough Road. This sewer will be privately owned until the completion of Phase 1. Wastewater from Phases 2 through 9 will be conveyed via force main to the Salem system located approximately 300-feet south of the primary entrance along Marlborough Road.

The Environmental Notification Form (ENF) for the project was noticed in the August 23, 2006 edition of the Environmental Monitor. On September 21, 2006 the proponent submitted a request to the MEPA office for a Phase 1 Waiver that would allow the proponent to commence construction of the 19 homes in Phase 1 prior to completion of the EIR for the entire project. The Secretary of Environmental Affairs issued a Certificate on the ENF on October 11, 2006 that outlined the Scope for the EIR and granted the Phase 1 Waiver. A Final Record of Decision (FROD) on the Phase 1 Waiver was issued on November 9, 2006.

MEPA Jurisdiction

The project is subject to a mandatory Environmental Impact Report (EIR) and is undergoing review pursuant to Section 11.03(1)(a)(1) and 11.03(1)(a)(2) of the MEPA regulations because it requires state permits and will result in the alteration of more than 50 acres of land and the creation of ten or more acres of impervious surface. The project also exceeds MEPA ENF review thresholds for wastewater at 301 CMR 11.03(5)(b)(3)(c) because the project requires the construction of greater than ½ a mile of new sewer main not located in the existing right of way.

The project requires a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the U.S. Environmental Protection Agency (EPA); a Sewer Extension Permit from the Department of Environmental Protection (MassDEP); and review from the Massachusetts Historical Commission (MHC). The project has received Subdivision Approval and Special Permits from the Salem Planning Board and a Final Order of Conditions from the Salem 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 wastewater and historic resources. The Certificate on the ENF encouraged the

proponent to respond in the DEIR to comments from MassDEP regarding the project's impacts on wetlands and stormwater.

The purpose of MEPA review is to ensure that a project proponent studies feasible alternatives to a proposed project; fully discloses environmental impacts of a proposed project; and incorporates all feasible means to avoid, minimize, or mitigate Damage to the Environment as defined by the MEPA statute. I have fully examined the record before me, including but not limited to the Scope issued on October 11, 2006; the DEIR filed in response; and the comments entered into the record. I find that the DEIR is sufficiently responsive to the requirements of the MEPA regulations and the Scope to meet the regulatory standard for adequacy. The proponent has provided a considerable amount of information about the project and its potential impacts and proposed mitigation. The proponent has demonstrated the project's consistency with the *City of Salem Master Plan Update and Action Plan for 1996-2006* (2006) and the Metropolitan Area Planning Council's *MetroPlan 2000*. The proponent has also responded in detail to comments submitted on the ENF. The proponent may address remaining issues during permitting.

Alternatives

The Certificate on the ENF required that the proponent conduct a comprehensive analysis to evaluate design alternatives to reduce environmental impacts. During the planning and local permitting of the project, the proponent considered the environmental impacts of a no-build alternative, a conventional residential subdivision, and the preferred Open Space Residential Subdivision. The DEIR summarized these alternatives.

While the proposed alternative results in the construction of 131 homes as opposed to 112 homes in a conventional residential subdivision, the clustered nature of the Open Space Residential Subdivision results in significant environmental benefits. The average lot size in the preferred alternative is ½ an acre and every home will border on dedicated open space. Approximately 96 acres of the project site will be permanently protected open space. The project design also allows for the establishment of a publicly accessible trail network across the site. These open space benefits would not be realized under the conventional subdivision scheme. The proponent may carry the preferred alternative forward to permitting. The proponent should note comments from MassDEP regarding reducing imperviousness on site through decreasing roadway widths.

Stormwater

According to the DEIR, the proposed development complies with MassDEP's Stormwater Management Policy (SMP) and incorporates Integrated Management Practices (IMP) and Low Impact Development (LID) techniques. Proposed Best Management Practices (BMPs) include deep sump catch basins, Vortech units, and extended detention basins with sediment forebays. The DEIR contained a Stormwater Management Report detailing the proposed system. In accordance with Standard #6 of the SMP, these BMPs will be designed to treat the first inch of rainfall for use in critical areas. While only a portion of the site is classified as an Outstanding Resource Water (ORW) and subject to the one inch requirement, the proponent has designed the entire site to capture and treat the first inch of rainfall. The DEIR

also provided a discussion of how the project will comply with the other applicable SMP standards.

The proponent has committed to installing erosion and sedimentation controls in the form of silt fence and/or haybales between proposed work areas and wetland resource areas. In compliance with the EPA NPDES Construction General Permit, a Stormwater Pollution Prevention Plan (SWPPP) is already in effect for construction activities on the site.

Wetlands

Strongwater Brook originates on the site and is the primary natural watercourse on the property. A single Outstanding Resource Water (ORW)/Bordering Vegetated Wetland (BVW) to a public water supply is located in the northwest corner of the property. According to the DEIR, the project has been designed to avoid, minimize and mitigate wetlands impacts to the best extent possible. Design measures include crossing wetlands at the narrowest points or where there is little vegetation; using partial or full span bridges and arch crossing techniques versus culverts and more conventional rip rap slopes; and preserving approximately 59% of the site as protected open space. The subdivision lots have been laid out to avoid wetland resources, and those lots containing wetland resources are subject to a restrictive covenant that will ensure that the cumulative total of BVW impacts of the entire subdivision do not exceed 5,000 square feet (sf). Of the 131 house lots in the project, only twelve contain BVW and will be subject to the covenant. A copy of the proposed Restrictive Covenant was submitted with the DEIR. The proponent should consult with MassDEP regarding their comments on the covenant and should modify the agreement as necessary. No impacts to Outstanding Resource Waters are proposed as part of the project. The proponent will span the site's ORW wetland to prevent any alteration to the resource area.

A Final Order of Conditions (DEP #064-0418) was issued by the Salem Conservation Commission on July 13, 2006, authorizing approximately 2,110 sf of BVW alteration and approximately 1,470 sf of non-jurisdictional state or Federal isolated vegetated wetland (IVW) to be permanently filled by proposed access road and footbridge construction. Since the filing of the ENF, the U.S. Army Corps of Engineers (ACOE) has determined that the 1,470 sf isolated wetland located on the eastern edge of the property is non-jurisdictional pursuant to Section 404 of the Clean Water Act and is therefore not considered a water of the United States. This means that the total wetlands alteration for the project will be 2,110 sf of BVW as a result of filling for access road and footbridge construction.

Wetland replication will be provided at a 1.5:1 ratio for a total of 5,400 sf of replication. The final design of wetland replication areas will comply with the Massachusetts Inland Wetland Replication Guidelines (2002). The proponent has prepared a wetland replication construction sequence and monitoring program that was outlined in the DEIR.

Wastewater

According to the DEIR, the project will generate 57,200 gallons per day (gpd) of wastewater, which will be discharged through new sewers to the City of Salem's collection system and conveyed to the South Essex Sewerage District for treatment. Wastewater from the

first 19 homes to be constructed in Phase 1 will flow by gravity to a connection with an existing 10-inch diameter Salem sewer which flows northerly in Marlborough Street. Flows from phases 2 through 10 of the project will be conveyed southerly along Marlborough Street for approximately 300 feet and will tie into an existing sewer line at Highland Avenue. At the request of the City, the proponent engaged an engineering firm to prepare a Sanitary Sewer Flow Analysis to document the capacity of the Highland Avenue sewer main to receive flows from the project. This analysis was submitted with the DEIR. The results of the analysis demonstrate that existing peak flows in the 20 inch diameter sewer are at 44.4% of capacity, and that at full build project flows could increase that to 53.8% of capacity. Therefore the proponent concludes that there is ample capacity for the project.

The proponent has committed to making a \$60,000 contribution to the City of Salem's recently initiated infiltration/inflow (I/I) removal project. The City Engineer is satisfied that the project flows can be accommodated by Salem's system, and has signed both the proponent's Sewer System Extension and Connection Permit Application for Phase 1 and the full-build project.

Historic Resources

According to MHC's review of the Inventory of Historic and Archaeological Assets of the Commonwealth, there are two recorded ancient Native American archaeological sites within the project area. Several other ancient archaeological sites have also been found in the immediate vicinity of the project area. In response to MHC's comments on the ENF, the proponent conducted an intensive (locational) archaeological survey at the project site in accordance with 950 CMR 70, under the State Archaeologist's Permit #2912. The testing included over 100 test pits and was conducted in November 2006. According to the DEIR, no cultural materials or features were identified or collected during the survey. The Technical Report for the Intensive Archaeological Survey has been submitted to MHC for review. MHC has provided comments on the DEIR indicating that no further MHC review is required for the project as proposed.

Sustainable Design

The Certificate on the ENF required that the proponent evaluate sustainable design alternatives for the project that could serve to avoid or minimize potential environmental impacts. According to the DEIR, the proponent has evaluated sustainable construction and operation measures, including measures identified by the Leadership in Energy and Environmental Design Neighborhood Design (LEED-ND) guidelines. The DEIR provides a discussion of how the project will incorporate LEED-ND design measures related to wastewater and stormwater efficiency; access to public open space; ecological communities and parkland preservation; wetland and waterbody protection; erosion and sedimentation control; site design and restoration for habitat and wetland conservation; steep slope preservation; minimization of site disturbance; reduction and maintenance of stormwater runoff rates; and creation of pedestrian networks.

Pedestrian Connections

The DEIR included a discussion in response to comments from WalkBoston regarding

the project's sidewalks, paths and pedestrian connections. In addition, the proponent has modified certain aspects of the project plan to incorporate WalkBoston's suggestions. WalkBoston's comments on the DEIR indicate that the organization believes that there are additional design measures that could be incorporated into the project to further enhance pedestrian connections within the project site and from the proposed subdivision into surrounding neighborhoods. I encourage the proponent to continue to consult with WalkBoston regarding their thoughtful comments on the DEIR.

Construction Period Impacts

The DEIR included a discussion of measures that will be implemented by the proponent to minimize construction period impacts. The proponent will employ sedimentation and erosion control measures and will locate construction stockpiles a minimum of 25 feet outside of wetland resource areas to minimize environmental impacts. The DEIR outlined de-watering measures that would be employed during construction and committed to maintaining a spill containment kit onsite throughout the duration of construction. All off-road construction equipment will use Ultra Low Sulfur Diesel Fuel and the proponent will encourage contractors to use construction equipment that is outfitted with particulate control devices.

Mitigation

The DEIR presents a Draft Section 61 Finding for the MassDEP Sewer Extension Permit that includes mitigation commitments covering areas of impact. While the municipal sanitary sewer system has the capacity to accommodate the additional flows related to the project, the proponent has also committed to providing \$60,000 to the City of Salem Sewer Department to fund removal of I/I from the Salem sewer system. The Final Section 61 Findings will be included with all state permits issued for this project, and will be considered binding upon the proponent as mitigation commitments. I remind MassDEP to forward a copy of the Section 61 Finding, once issued, to the MEPA Office for completion of the project file.

Conclusion

The DEIR adequately assessed potential project impacts and committed to measures that will avoid, minimize and mitigate adverse impacts. I am satisfied that any outstanding issues can be addressed through the state and local permit and review process. I am allowing the DEIR to be reviewed as a Final EIR in accordance with 301 CMR 11.08(8)(b)(2). The availability of the Final EIR will be noticed in the February 6, 2007 issue of the *Environmental Monitor* and subject to a 30-day public comment period, after which I will issue a Certificate on the Final EIR.

January 29, 2007

Date



Ian A. Bowles

Comments Received:

1/19/2007 Massachusetts Historical Commission
1/22/2007 WalkBoston
1/22/2007 Massachusetts Department of Environmental Protection, Northeast Regional Office

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