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October 11, 2006

DRAFT RECORD OF DECISION

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

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 (ENF), 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. 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 93 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.

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.

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.

Waiver Request

The 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. A sewer extension permit is required from MassDEP for construction of the gravity sewer serving Phase 1. The proponent also requested a two-week extension of the MEPA review period for the project to allow for consideration of the waiver request.

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 1 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 1 are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase 1; 3) the project is severable, such that Phase 1 does not require the implementation of any other future phases; and 4) the agency action on Phase 1 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 potential environmental impacts of Phase 1, taken alone, are insignificant:
 - Total land alteration for Phase 1 is 5.3 acres, less than 8% of the full project build-out. Of this, an estimated 2.5 acres will be impervious area (road, houses, driveways). Both Phase 1 land alteration and impervious area are less than the MEPA ENF review thresholds. No portion of Phase 1 is within any wetland resource area or buffer zone.
 - At the time of Marlborough Road's recent reconstruction, the proponent installed a sewer stub to facilitate connection to the existing sewer in Marlborough Road without disturbing pavement. The project flows from the 19 homes is 8,360 gallons per day (gpd), which is significantly less than the ENF review threshold for wastewater to sewer systems (100,000 gpd or more) (301 CMR 11.04(5)(b)(3.a)).
The proponent intends to install the gravity sewer for Phase 1 concurrently with the access road construction which will reduce potential drainage issues during construction, and minimize emissions and noise from construction equipment.
2. Ample and unconstrained infrastructure facilities and services exist to support Phase 1:
 - The City of Salem Engineering Department has advised the proponent that the Marlborough Road sewer, a 10" gravity line, has ample capacity to accommodate the flows from the 19 homes in Phase 1 of the project.
3. The project is severable, such that Phase 1 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.

- Phases 2 through 10 of the project will be served by a force main to the McGrath Park Cross-Country Sewer. That force main is a separate sewer than the Phase 1 gravity main, and will not be able to be constructed until a DEP Sewer Extension and Connection Permit has been obtained, following preparation of the EIR.
4. The Agency Action on Phase 1 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:
- The project design requires that the remaining homes be sewered by force main. This will require a Sewer Extension and Connection permit from MassDEP (BRP WP 13/14), which cannot be issued by DEP until MEPA compliance has issued. Without the MassDEP sewer extension and connection permit, other phases of the Project may not commence. Phase 1 does not require any other Agency Action than the sewer extension permit for the proposed 19 homes.
 - 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. MHC has requested that an intensive (locational) archaeological survey (950 CMR 70) be conducted for the project. MassDEP will require a letter from MHC indicating that archaeological issues have been satisfied in advance of sewer permitting for each phase of the project.

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 1 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.

October 11, 2006

Date

Robert W. Golledge, Jr.

Comments Received:

8/18/2006 Deborah & John Conroy
 8/31/2006 Massachusetts Historical Commission
 9/11/2006 WalkBoston

9/21/2006 Epsilon Associates, Inc. for the Proponent
10/2/2006 Department of Environmental Protection, Northeast Regional Office

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