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December 19, 2007

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
 ON THE
 FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Sutton Residential Open Space Development
 PROJECT MUNICIPALITY : Sutton
 PROJECT WATERSHED : Blackstone
 EOE A NUMBER : 13876
 PROJECT PROPONENT : Hawthorne Land Development, LLC
 DATE NOTICED IN MONITOR : November 12, 2007

As Secretary of Energy and Environmental Affairs, I hereby determine that the Final Environmental Impact Report (FEIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00).

The project consists of a 58-unit, single-family residential development and associated infrastructure including on-site water supply wells, a stormwater management system, new sewer mains, on-site roadways and off-site road-widening. The project is located on a 149-acre site, which contains wetlands resource areas and rare species habitat. Approximately 45 acres of the site is currently used as a Christmas tree farm. According to the FEIR, the project will result in approximately 48 acres of land alteration, which includes 9.7 acres of impervious area (5.9 new acres of impervious). The project will also result in 850 square feet of Bordering Vegetated Wetlands (BVW) alteration, and loss of ten living public shade trees. Water use is estimated at 27,951 gallons per day (gpd) and wastewater generation is estimated at 25,410 gpd. The project includes construction of 0.56 miles of new sewer mains.

The project is undergoing MEPA review and requires a mandatory EIR pursuant to Section 11.03(1)(a) of the MEPA regulations because, at the time of the ENF filing, direct alteration of 50 or more acres of land was proposed. The project as proposed in the FEIR will result in 48 acres of land alteration. The project is also undergoing MEPA review pursuant to: Section 11.03(1)(b)(2) because it will result in creation of 5 or more acres of impervious area; Section 11.03(1)(b)(4) because it involves conversion of land in active agricultural use, containing prime agricultural soils, to non-agricultural use; Section 11.03(2)(b)(2) because it will

result in a taking of an endangered or threatened species or species of special concern; Section 11.03(5)(b)(3)(c) because it involves construction of a new sewer mains of 1/2 or more miles in length; and Section 11.03(6)(b)(2)(b) because it will result in cutting of 5 or more living public shade trees of 14 or more inches in diameter.

The project will require a Sewer Extension Permit and a 401 Water Quality Certification from the Department of Environmental Protection (MassDEP). The project requires an Order of Conditions from the Sutton Conservation Commission (and, upon appeal only, a Superseding Order from MassDEP). The project will require a Conservation and Management Permit from the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). The project also requires a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit from the U.S. Environmental Protection Agency (EPA).

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 state permits with the potential to cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to wetlands, water quality, rare species, wastewater, land, stormwater and drainage.

FEIR REVIEW

Rare Species

The proposed project will occur within habitat of the Eastern Box Turtle (*Terrapene Carolina*, Special Concern), Marbled Salamander (*Ambystoma opacum*, Threatened), and Four-toed Salamander (*Hemidactylium scutatum*, Special Concern), which are protected in accordance with the Massachusetts Endangered Species Act (MESA). As indicated in the FEIR and in the comment letter from NHESP, it appears that a "take" will be avoided for the Four-toed and Marbled Salamanders. However, the project will result in a "take" of the Eastern Box Turtle. Since the DEIR, calculations of habitat impacts have been refined. The project as proposed in the FEIR will impact approximately 34.2 acres of potential Eastern Box Turtle habitat, representing approximately 23 percent of potential habitat area on the project site. The project will impact 0.3 acres of potential Four-toed Salamander habitat (representing 0.2 percent of potential habitat area on the project site) and 1.7 acres of Marbled Salamander habitat (representing 1.1 percent of potential on-site habitat). The FEIR describes mitigation proposed by the proponent.

As further detailed in its comment letter, NHESP anticipates being able to issue a Conservation and Management Permit for the proposed project. Mitigation to minimize impacts and to benefit the state-listed species will include: permanent protection of on-site state-listed species habitat (approximately 101 acres), wildlife crossing structures, procedures to minimize impacts to state-listed species during construction, and long-term management of early successional and nesting habitat important to Eastern Box Turtles.

The scope required that the FEIR describe any proposed forest cutting and related impacts, including potential impacts to habitat of state-listed species. According to the FEIR, the

property owner will continue Christmas tree harvesting activities on the site. However, the forest-cutting plan mentioned in the DEIR is no longer being considered. The proponent should continue consultations with NHESP to finalize mitigation plans and other details of the Conservation and Management permit. NHESP will make a final determination regarding the "take", and whether all permitting standards are met, once a formal MESA filing and Conservation and Management Permit Application have been submitted by the proponent.

Wetlands and Stormwater Management

According to the FEIR, the proposed stormwater management system will comply with the MassDEP Stormwater Management Policy standards. Post-development runoff rates and volumes will be maintained at or below existing levels and the system will be designed to minimize pollutant and thermal impacts on fishery resources associated with Singletary Pond. Post-construction operation and maintenance of the stormwater management system will be funded through the Homeowner's Association, which will be established for the project.

The proponent has committed to erosion and sedimentation controls, a Construction Management Plan, a Stormwater Pollution Prevention Plan, and a range of stormwater management Best Management Practices (BMPs) to protect wetlands resources on-site and in the vicinity of the project. All in-stream work will be conducted during low flow periods as recommended by NHESP. The proponent has committed to placing a Conservation Restriction on 101 acres, which will include the vernal pools on-site and forested areas surrounding them.

As described in the FEIR, the project has been revised to reduce the access roadway width and related impacts to wetland "D". The boulevard entrance roadway will consist of two 12-foot aisles instead of two 18-foot aisles, which will reduce BVW impacts from 1,759 (as proposed in the DEIR) to 850 sf. The proponent has committed to replicate wetlands at a 1:1 ratio in an area adjacent to Wetland "D".

The project is subject to MESA review. As further detailed in the MassDEP comment letter, a determination by NHESP that a project may proceed pursuant to a Conservation and Management Permit shall be presumed to satisfy standards for no short or long-term adverse effect pursuant to the wetlands regulations. The Order of Conditions for the project (to be issued by Sutton Conservation Commission or MassDEP under an appeal) shall incorporate conditions that are consistent with the NHESP conditions or determinations.

Wastewater

The FEIR proposes discharge of wastewater to the Town of Millbury sewer system, and ultimately to the Upper Blackstone Wastewater Treatment Facility. MassDEP has indicated that a sewer extension permit cannot be approved until the Towns of Sutton and Millbury renegotiate their current Inter Municipal Agreement (IMA) or until a private agreement between the proponent and the Town of Millbury is approved by the Town of Sutton. According to the FEIR, the towns have made progress on the IMA. However, the proponent intends to pursue a private agreement with Millbury if the IMA is not finalized by the time the proponent seeks its permits. I

remind the proponent that a copy of the updated IMA or private agreement must be provided with the permit application for the MassDEP review.

Agricultural Soils

The Department of Agricultural Resources (DAR) requested that the proponent establish a community garden as mitigation for prime farmland soils impacts. The proponent has committed to establish a community garden if there is demand from residents. The FEIR included a site plan identifying the location of the community garden, which is proposed for the eastern side of the project site near the entrance. Twenty-eight plots (15-feet by 15-feet each) are proposed as well as an irrigation well with a hand pump.

Sustainable Design

The FEIR includes an update on sustainable design aspects of the project including use of energy-efficient windows and appliances. The FEIR also anticipates that recycled materials, passive solar design features and xeriscaping will be incorporated in the project. I encourage the proponent to consider EnergyStar Certification and Leadership in Energy and Environmental Design (LEED) Certification for Homes.

Mitigation and Section 61 Findings

The FEIR includes draft Section 61 Findings for the Sewer Extension permit and the Conservation and Management Permit. The proponent should update its draft Section 61 Findings with details of stormwater mitigation measures as proposed in the FEIR and provide an electronic version of the revised Section 61 Findings to MassDEP as requested in its comment letter.

Mitigation summary

The proponent has committed to measures to avoid, minimize and mitigate environmental impacts, which include:

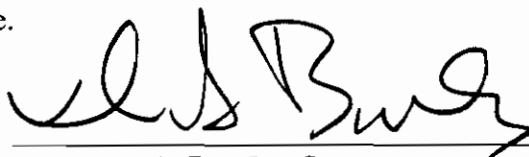
- *Rare species*: permanent protection of on-site state-listed species habitat (approximately 101 acres), wildlife crossing structures, procedures to minimize impacts to state-listed species during construction, and long-term management of early successional and nesting habitat important to Eastern Box Turtles;
- *Sustainable design*: clustering development on 48 acres of the 149-acre site, permanent protection of approximately 101 acres under a Conservation Restriction, use of Low Impact Development (LID) alternatives, energy-efficient features, and ecologically preferable landscaping approaches;
- *Public shade trees*: the proponent has committed to work with the Town of Sutton to replace public shade trees along DeWitt Road in an expanded landscaped area at the intersection of West Sutton Road;
- *Agricultural soils*: the project plan includes provisions for a community garden as mitigation for impacts to prime agricultural soils;

- *Wetlands*: a replication area will be established as mitigation for 850 square feet of BVW alteration; and
- *Stormwater and construction*: the proponent will implement stormwater management BMPs, erosion and sedimentation controls, a Construction Management plan, and a Stormwater Pollution Prevention plan.

Based on my review of the FEIR and comment letters received, and after consultation with relevant state agencies, I am satisfied that any outstanding issues can be adequately addressed during the state permitting and review process. The proposed project requires no further review under MEPA. State agencies should forward copies of the final Section 61 Findings to the MEPA Office for the project file.

December 19, 2007

DATE



Ian A. Bowles, Secretary

Comments Received

11/06/07 Department of Environmental Protection, Central Regional Office
12/12/07 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program

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