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June 25, 2004

DRAFT RECORD OF DECISION

PROJECT NAME : Rocky Hill and Stratton Hill
Developments
PROJECT MUNICIPALITY : Groton and Ayer
PROJECT WATERSHED : Nashua River and Merrimack River
EOEA NUMBER : 13266
PROJECT PROPONENT : Fox Meadow Realty Corporation
DATE NOTICED IN MONITOR : May 8, 2004

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I have reviewed the project and **propose to grant a Phase I Waiver** to allow Phase I of the project (as described in the Expanded Environmental Notification Form (ENF)) to proceed to the state permitting agencies prior to completion of MEPA review.

Project Description

As described in the Expanded ENF, the proposed project consists of two developments, Rocky Hill and Stratton Hill, on a 667-acre parcel under single ownership located in Groton and Ayer. The site is located within the Petapawag Area of Critical Environmental Concern (ACEC) and within actual habitat of rare species. The proposal for Rocky Hill includes 84 housing units on 60 acres located in Groton. It will be accessed via a through road connecting Boston Road (Route 119/225) and Sandy Pond Road. Water will be provided by the Town of Groton and

wastewater will be managed through private, on-site septic systems. The proposal for Stratton Hill includes 35 single family homes on 70 acres in Ayer. Access will be provided via a looped access road off of Wright Road. Water will be provided by the Town of Ayer and wastewater will be discharged to the Ayer Wastewater Treatment Facility.

Project impacts are associated with alteration of 72 acres of land, alteration of 306 square feet (sf) of Bordering Vegetated Wetlands (BVW), creation of 15 acres of impervious surfaces, generation of 1,194 vehicle trips per day and generation of 46,115 gallons per day (gpd) of wastewater. The Expanded ENF summarizes proposed mitigation measures including the proponent's commitment to permanently preserve approximately 72% (or 484 acres) of the project site as conservation land. An additional 53 acres of open space will be retained within the development footprint of Rocky Hill.

Permits and Jurisdiction

The project is undergoing MEPA review and is subject to preparation of a mandatory EIR pursuant to Section 11.03 (1)(a)(1) and (1)(a)(2) because it requires a state permit and, cumulatively, will alter over 50 acres of land and create over 10 acres of new, impervious surfaces. The project requires an Access Permit from the Massachusetts Highway Department (MHD) and a Conservation Permit from the Department of Fish and Game's (DFG) Natural Heritage and Endangered Species Program (NHESP). It requires a Sewer Extension Permit and a Title 5 Shared System Approval from the Department of Environmental Protection (DEP). It also requires an Order of Conditions from the Ayer and Groton Conservation Commissions (and hence a Superseding Order of Conditions from DEP if the local order is appealed).

Because this project does not involve state funding, MEPA jurisdiction is limited to the subject matter of the state permits required for the project. These include rare species, wetlands, traffic, wastewater, and historic/archaeological resources.

Waiver Request

In accordance with Section 11.11 of the MEPA Regulations, the proponent has requested that I waive the requirement to prepare an EIR for the entire project. If an EIR is required,

the proponent has requested that I grant a waiver to allow Phase I of the project, as described in the Expanded ENF, to proceed in advance of the completion of the EIR. Phase I consists of the construction of two buildings containing 9 affordable housing units located adjacent to Sandy Pond Road.

Criteria for Waiver

The MEPA Regulations provide that a waiver may be granted upon a finding that strict compliance with the regulations will result in an undue hardship and will not serve to minimize or avoid damage to the environment. This finding shall be based on one or more of the following circumstances: 1) the project is likely to cause no damage to the environment, and 2) ample and unconstrained infrastructure facilities and services exist to support the project.

In the case of a Phase I waiver, 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 record before me and after consultation with relevant state agencies, I find that:

- 1) The impacts of the entire project are significant, require additional environmental review and cannot be supported by existing infrastructure and services.
- 2) The impacts of Phase I are likely to be insignificant. Phase I will alter less than one acre of land and does not require any wetlands alterations.
- 3) Ample and unconstrained infrastructure and services exist to support Phase I. The units will be served by an existing water main. The project has direct vehicular access to Sandy Pond Road and will not contribute to traffic congestion.
- 4) The project is severable. Phase I is not dependent

upon the implementation of any future phases and its construction will not restrict mitigation options for the entire project.

- 5) Phase I requires a Title 5 Shared System Approval from DEP. This approval may be contingent upon completion of future MEPA review. Establishment of a Special Review Procedure for the remainder of the project will ensure that the project undergoes adequate environmental review and appropriate mitigation is provided, including the transfer of 484 acres of open space for protection as conservation land.

Based on these findings, it is my judgment that the project does not meet the tests established in Section 11.11 of the MEPA regulations for a full waiver of the EIR requirement; however, the Phase I waiver request has merit and meets the tests established in 301 CMR 11.11. Therefore, I propose to grant the Phase I waiver request. 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.

June 25, 2004

Date

Ellen Roy Herzfelder

Comments on the ENF:

06/15/04 Department of Fish and Game/Natural Heritage and Endangered Species Program
 06/15/04 Department of Conservation and Recreation/
 Areas of Critical Environmental Concern Program
 05/24/04 Department of Environmental Protection
 06/15/04 Massachusetts Highway Department
 06/14/04 Massachusetts Historical Commission
 06/14/04 Town of Groton/Office of the Planning Board
 06/15/04 Town of Groton/Conservation Commission
 06/04/04 Montachusett Regional Planning Commission
 06/16/04 Squannassit-Petapawag ACEC Stewardship Committee
 06/15/04 Mass Audubon
 06/14/04 Patrick Hughes
 06/14/04 Thomas and Heidi Cowley

ERH/CDB/cdb