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October 7, 2005

DRAFT RECORD OF DECISION

PROJECT NAME : Wareham Road Mixed Use Development
PROJECT MUNICIPALITY : Plymouth
PROJECT WATERSHED : Buzzards Bay
EOEA NUMBER : 13580
PROJECT PROPONENT : ADM Agawam Development LLC
DATE NOTICED IN MONITOR : July 9, 2005

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 hereby **propose to grant a Phase I Waiver** to allow commencement of the first phase of the project prior to completion of the Environmental Impact Report (EIR) for the entire project. A Certificate on the Expanded Environmental Notification Form (ENF) with a Scope for the Draft EIR (DEIR) has been issued separately.

Project Description

The proposed project involves development of 1,185 residential units and 90,000 square feet (sf) of commercial space on a 1,320-acre site. The project will result in approximately 385 acres of land alteration including approximately 100 acres of new impervious area. The remaining 935 acres of the project site will remain as protected open space that will include trails and continuing cranberry operations. The proposed project will be developed in two phases. Phase I includes 65 single-family homes on a 65-acre parcel. Phase II consists of the remainder of the project.

According to the Expanded Environmental Notification Form (ENF), Phase I will result in alteration of 40 acres of land including 9 acres of impervious area. Traffic impacts associated with Phase I are estimated at 700 vehicle trips per day. Individual Title 5 septic systems are proposed to handle wastewater from the proposed Phase I homes. Water use for Phase I is estimated at 24,000 gpd and will be supplied from an on-site well. Phase I also includes 2 miles of new water mains, 1.8 miles of new roadway and improvements to a portion of the existing Wareham Road.

Jurisdiction

The project is undergoing MEPA review and requires a mandatory EIR pursuant to: Section 11.03(1)(a)(1) of the MEPA regulations because it involves alteration of 50 or more acres of land; Section 11.03 (1)(a)(2) because it involves creation of 10 acres or more of impervious area; Section 11.03(6)(a)(6) because it involves generation of 3,000 or more new average daily trips (adt) on roadways providing access to a single location; Section 11.03(6)(a)(7) because it involves construction of 1,000 or more new parking spaces at a single location; Section 11.03(4)(a)(3) because it involves construction of new water mains ten miles or more in length; and Section 11.03(5)(a)(3) because it involves construction of new sewer mains ten or more miles in length. The project is also undergoing MEPA review pursuant to: Section 11.03(2)(b) because it is likely to involve a "take" of a rare species; Section 11.03(4)(b)(1) because it involves withdrawal of 100,000 gallons or more per day (gpd) from a water source that requires new construction for the withdrawal; Section 11.03(5)(b)(1) because it involves construction of a new wastewater treatment facility with a capacity of 100,000 or more gpd; Section 11.03(10)(b)(2) because of potential destruction of an archaeological site listed in the Inventory of Historic and Archaeological Assets of the Commonwealth; and Section 11.03(1)(b)(4) because of the potential conversion of land containing prime or state-important soils to non-agricultural use.

The project requires a 401 Water Quality Certification, a Groundwater Discharge permit, a Water Management Act Permit, New Source Approval and other water supply approvals from the Department of Environmental Protection (DEP). The project also requires an Order of Conditions from the Plymouth Conservation Commission (and on appeal only, a Superseding Order from DEP) and a Conservation and Management Permit from Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). The project will also require a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit from the US Environmental Protection Agency (EPA). The project is also subject to review by the Massachusetts Historical Commission (MHC) and requires State Archaeologist Permits.

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 rare species, historic and archaeological resources, wastewater, wetlands, water quality, water supply, agriculture, land, and stormwater.

Waiver Request

On June 30, 2005, the proponent requested that I grant a waiver to allow Phase I of the project to proceed in advance of completion of the EIR. The waiver request was submitted with

the Expanded Environmental Notification Form (ENF), and it was discussed at the consultation/scoping session that was held on July 29, 2005 and again at a second site visit on August 25, 2005. As proposed, Phase I consists of the construction of 65 single-family homes on a 65-acre portion of the project site. Phase I involves a Transfer of Development Rights (TDR) to allow a more compact development on the Phase I area while protecting open space off-site at Halfway Pond East. Proposed lot sizes for the Phase I development are 20,000 square feet (sf) instead of the minimum 60,000 sf required under conventional subdivision zoning.

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 I of the project prior to preparing an EIR, the finding required under Section 11.11(1)(b) shall be based on a determination that: 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 phase 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 I will contain terms, such as a condition or restriction in a permit to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

- a) Requiring completion of a mandatory EIR prior to Phase I of the project would result in undue hardship for the proponent; and
 - b) Requiring completion of a mandatory EIR prior to Phase I of the project would not serve to avoid or minimize Damage to the Environment.
1. The potential environmental impacts of Phase I, taken alone, are insignificant. Phase I alone does not trigger any mandatory EIR thresholds. The majority of the proposed Phase I lies outside of mapped Priority Habitat. The NHESP does not object to the granting of a Phase I Waiver for the project provided that certain conditions are met as further detailed below and in the NHESP comment letter.

The proponent has committed to a TDR that will protect at least 90 acres of land in the Halfway Pond East, and to the use of Low Impact Development (LID) techniques to minimize impacts associated with land alteration and impervious area. The proponent has committed to erosion and sedimentation controls to protect wetlands resources, nitrogen reducing technology for proposed septic systems and other mitigation measures as further detailed in the Expanded ENF. The proponent has also committed to completion of rare species and archaeological surveys prior to commencement of Phase I.

Although I find that the potential impacts of Phase I are insignificant, I acknowledge the comments and concerns of NHESP, MHC, the Department of Agricultural Resources (DAR), the Division of Marine Fisheries (DMF) and other commentors, and note that this finding of insignificance is conditional upon the proponent's compliance with the following requirements.

As conditions of this Waiver:

Rare Species

- Improvements to Wareham Road will be considered temporary, pending completion of the Phase II permitting process with NHESP;
- The proponent must complete rare species surveys of the Phase I area following NHESP-approved protocols prior to the start of Phase I construction;
- Phase I must avoid a "take" of state-listed rare species or the proponent must apply for a Conservation and Management Permit (321 CMR 10.23) prior to construction, should the surveys result in detection of rare species within the Phase I area;
- The proponent must satisfy NHESP survey and permitting requirements prior to the start of Phase I construction;
- The proponent must adhere to all conditions outlined in a letter from Doug Landry of VHB dated July 27, 2005 (attached);
- As part of the TDR process for Phase I, a Conservation Restriction (CR) must be placed on a minimum of 90 acres of land in the proponent's Halfway Pond east parcel. The location and details of this CR must be approved by NHESP;
- The proponent must coordinate with NHESP regarding the proposed Phase I well location, design and construction, as well as the paving of Wareham Road and the Phase I access road, to ensure potential impacts to Priority Habitat are adequately avoided and minimized or mitigated.

Historical and Archaeological Resources

- The proponent must complete an intensive archaeological (locational) survey as required by MHC and as further detailed in its comment letters on the ENF;
- The proponent must complete consultations with MHC, prior to Phase I construction, regarding the survey results and any design changes and/or mitigation that may be required for the Phase I area to protect historic and archaeological resources.

Wastewater Management

- The proponent must provide the Town of Plymouth with a detailed description of the nitrogen-reducing technology proposed for the Phase I septic systems;
- The proponent must provide sufficient information to the Town of Plymouth to substantiate the statement in the ENF that the proposed Phase I septic systems will not result in any significant impacts to Buttermilk Bay.

Agricultural Resources

- The proponent must provide additional information to the DAR regarding the soils in the Phase I area and consult with DAR to determine if the soils are considered of state or local significance to farming and whether any mitigation may be required;
- The proponent must provide additional information to DAR regarding the proposed Phase I well including its location and potential Zone I and Zone II impacts on agricultural operations;
- The proponent must consult with DAR prior to filing with DEP for a Phase I water supply permit and include information on potential agricultural impacts of the proposed well to DEP during the new source approval process.

Agawam River and Fisheries Resources

- The proponent must consult with DMF prior to filing with DEP for a Phase I water supply permit and, based on these consultations, provide additional information to DMF regarding the proposed Phase I well including its potential stream flow impacts and potential alteration of hydraulic control within the Agawam river system; and
- The proponent must provide information on potential stream flow and river system impacts of the proposed well to DEP during the new source approval process.

2. Ample and unconstrained infrastructure facilities and services exist to support Phase I. The Phase I homes will be served by an on-site well and Title 5 sewage disposal systems. DEP has not objected to the proponent's request for a Phase I Waiver and has determined that water supply and wastewater issues can be adequately addressed during the permit process. Phase I will utilize, and improve portions of, the existing Wareham Road. Traffic impacts associated with Phase I are minimal and the Massachusetts Highway Department (MHD) has indicated in its comment letter that the Waiver request has merit and that the ENF has adequately documented Phase I traffic impacts. Although traffic impacts associated with Phase I are insignificant, the entire project will result in significant traffic impacts. Therefore, I strongly encourage the proponent to conduct a traffic analysis and prepare a mitigation plan as further detailed in Scope for the Draft EIR.
3. The project is severable, such that Phase I does not require the implementation of any future phase of the project or restrict the means by which other potential environmental impacts from any other phase of the project may be avoided and minimized or mitigated. The proposed homes to be developed during Phase I do not require the implementation of any future phase. Phase I will result in alteration of approximately 40 acres of the 1,320-acre site. An alternatives analysis for the remainder of the project site will be included in the EIR providing opportunities to consider alternative levels of development and site configurations, open space and habitat conservation plans, and project design changes that may serve to avoid and minimize, or mitigate environmental impacts from any other phase of the project.

I acknowledge the comment letters received indicating that a Phase I Waiver could restrict the potential for increased density of development in the Phase I area, which could serve to avoid and minimize, or mitigate impacts to Priority Habitat located in the proposed Phase II areas. However, the critical state agency action for the entire project is likely to be a Conservation and Management Permit and NHESP has not objected to the Phase I Waiver provided that certain conditions are met. I also remind the proponent that changes to the level of development and configuration proposed for Phase II may be necessary in order to provide adequate rare species habitat protection and avoid, minimize or mitigate other project impacts. As required by the Certificate on the Expanded ENF, the Draft EIR must include an alternatives analysis for Phase II that includes a reduced-build alternative.

4. The Phase I portion of the project requires a new source approval from DEP and may require a Conservation and Management Permit from NHESP. State agency actions on Phase I will contain conditions that ensure due compliance with MEPA prior to commencement of any other phase of the project.

Providing the conditions of this waiver are met, I am satisfied that Phase I of this project will be implemented in a manner that avoids, minimizes and mitigates impacts to the maximum extent feasible such that the potential environmental impacts of Phase I are insignificant. I am also satisfied that remaining issues can be adequately addressed during the state and local permit and review process. Based on these findings, I determine that the waiver request has merit and meets the tests established in Section 11.11. Therefore, I propose granting the Phase I waiver requested for this project. This Draft Record of Decision (DROD) shall be published in the October 24, 2005 issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

 October 7, 2005

DATE

 Stephen R. Pritchard, Secretary

Comments received (continued on next page)

7/22/05	Division of Marine Fisheries
7/27/05	Vanasse Hangen Brustlin, Inc. (on behalf of the proponent)
8/04/05	Department of Conservation and Recreation
8/09/05	Department of Environmental Protection, Southeast Regional Office
8/15/05	Pinewoods
8/26/05	Town of Wareham, Department of Planning
8/31/05	The Nature Conservancy
8/31/05	Southeastern Regional Planning & Economic Development District (SRPEDD)
9/12/05	Department of Agricultural Resources
9/12/05	Six Ponds Association
9/13/05	The Coalition for Buzzards Bay
9/13/05	Wildlands Trust
9/13/05	Mass Audubon
9/13/05	Watershed Action Alliance
9/13/05	William S. Abbott
9/13/05	Therese Murray, State Senator, Plymouth and Barnstable District
9/13/05	Steven Whitney, Old Colony Council, Boy Scouts of America
9/13/05	Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP)
9/13/05	Mettie Whipple
9/14/05	Massachusetts Historical Commission
9/21/05	Town of Plymouth, Planning Board
9/23/05	Old Colony Planning Council

EOEA # 13580

Draft ROD

October 7, 2005

9/28/05 Town of Plymouth, Board of Selectmen
9/30/05 Executive Office of Transportation, Office of Transportation Planning
9/30/05 Vanasse Hangen Brustlin, Inc. (VHB) (on behalf of the proponent)
10/6/05 Massachusetts Historical Commission

13580 Draft ROD
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