



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

AE

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KERRY HEALEY
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Commissioner

July 10, 2006

Mr. Lawrence Kady
R & D Development Realty, LLC
209 Johnson Street
North Andover, MA 01845

RECEIVED
JUL 11 2006
MEPA

RE: WATER QUALITY CERTIFICATION
Application for: BRP WW 10 - Major Project
Emerald Pines Country Club & Estates - Phase 2

AT: Howe Street
Methuen, MA
(Merrimack River Watershed)

TRANSMITTAL NUMBER: W066679
DEP WPA FILE Number: 219-0967
EOEA # 13246

Dear Mr. Kady:

The Department of Environmental Protection ("MassDEP") has reviewed your application for Water Quality Certification ("WQC"), as referenced above. In accordance with the provisions of MGL c.21, §§ 26-53 and Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 *et seq.*), and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards at 314 CMR 4.00.

The project site comprises approximately 215 acres of land located off of Howe Street in Methuen and abutting the Haverhill city line. Hawkes Brook and tributaries flow toward the Merrimack River adjacent to and through portions of the site.

The current proposal for the site subject to this review is for construction of an 18-hole golf course, 75 residential units, clubhouse, and associated infrastructure. The project involves the filling/alteration of 20,888 square feet ("sf") of federally delineated wetlands and Waters of the

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service 1-978-694-3492.

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Commonwealth. Permanent alteration of 16,514 square feet will be mitigated through replication of 24,742 sf and temporary alteration of 4,372 sf will be restored in-situ.

From a time prior to the application for WQC being filed, MassDEP staff have met with the development team to discuss alternative project designs, mitigation, and other issues of concern. The project has since been significantly re-designed to address MassDEP's concerns. These include clustering of some housing units, reconfiguration of golf holes, reduction in number and cutting height of view corridors, relocation of road crossings, and the addition of more buffer area and supplementary plantings, all resulting in avoidance or reduction of impacts to wetlands and Waters of the Commonwealth.

Based on the current record and MassDEP's familiarity with the site, MassDEP determines that the project meets the criteria of 314 CMR: 9.06 and grants a Water Quality Certification subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. This project could result in a violation of water quality standards adopted by MassDEP Division of Water Pollution Control. Therefore, reasonable care and diligence shall be taken by the contractor to assure that the proposed activity will not violate Class B criteria (314 CMR 4.05 (3)(b) and (5)).
2. All work shall conform to the Order of Conditions (DEP File #219-0967) issued by the Methuen Conservation Commission pursuant to the Massachusetts Wetland Protection Act (M.G.L. Chapter 131, section 40) on April 20, 2006, including all plans, documents and special conditions comprehensively listed therein, unless otherwise specified in writing by MassDEP.
3. This project shall be constructed and monitored according to the document referenced in the Order of Conditions titled Wetland Mitigation Program Emerald Pines – Phase 2, Howe Street, Methuen, Massachusetts, prepared by Wetlands Preservation, Inc., dated July 25, 2005, as modified by:
 - a) Prior to the start of construction, the applicant shall hire an Environmental Monitor (EM) who shall report to MassDEP, Conservation Commission and the applicant. The individual or firm shall have a minimum of five (5) years experience in wetland replication/restoration, erosion and sedimentation control practices and wildlife habitat evaluations, and shall have experience in general construction practices
 - b) The EM shall verify the placement and performance of erosion control measures and shall have the authority to halt construction for erosion control purposes.
 - c) The EM shall be responsible for overseeing the construction of wetland replication and restoration areas. In addition to the tasks described in the Program report referenced above, the EM shall review all aspects of field work which may have an adverse impact on aquatic resources, including, but not limited to: erosion control; cofferdam installation and removal; dewatering activities; and shall oversee all activities involving both state

and federal wetland resource areas, including but not limited to: removal of wetland soils from areas to be filled; storage of wetland soils or plant materials; excavation and grading of wetland replication areas; excavation and grading of compensatory flood storage areas; transportation of soils and plant materials; planting; and monitoring of wetland mitigation areas.

d) Following the commencement of construction and continuing until completion of the project, the Environmental Monitor shall submit weekly reports (which include weekly summaries of the status of wetland mitigation activities) summarizing the site activities within all state and federal jurisdictional wetland areas including the 100-foot buffer zone and 100-year floodplain. The weekly reports shall be sent to MassDEP and Conservation Commission. Weekly reports will include, but are not limited to, a description of the construction status, the overall site conditions, reports of any erosion, sedimentation or pollution problems and how they were corrected, and recommendations on how to prevent similar problems in the future. The Environmental Monitor shall immediately report any unauthorized discharges of sediments to MassDEP, the Conservation Commission and the applicant and shall take immediate steps to correct the problem.

e) EM monitoring of wetland mitigation areas and reporting shall be performed for a period of 5 years (five full growing seasons).

4. Pursuant to discussions with MassDEP, in addition to the EM, the applicant shall hire a third party Independent Environmental Monitor (IEM). The IEM shall be responsible for reviewing the project site and construction activities to determine whether all activities are in compliance with this 401 WQC, and shall report directly to the MassDEP Project Manager.

a) The objectives of the third party IEM inspection program are:

1) To monitor all construction, restoration and wetland mitigation activities to assure compliance with MassDEP wetlands permits.

2) To provide interpretation of MassDEP's conditions and standards at the request of the project EM.

3) To participate in field decisions with respect to wetlands alterations and mitigation based on conditions in the field at the time of construction.

b) Notwithstanding the duties of the IEM stated herein, MassDEP reserves the right to inspect the project at any time.

c) The IEM shall have the following minimum qualifications:

1) Equal or more experience as the EM, at minimum having a degree in an environmental science or civil engineering (or equivalent working experience) and a working knowledge of wetland, terrestrial, and aquatic ecosystems; hydrology; and basic agronomic principles. Additionally, shall not have worked

on the design or development of the project and does not have a prior or existing financial relationship with the project proponents or existing financial relationship with the EM.

2) Land development and construction environmental inspection experience and a working knowledge of practical environmental mitigation techniques.

3) A working knowledge of, and the ability to clearly understand and articulate, local, state and federal permits and conditions.

4) The ability to clearly document activities being inspected.

5) Qualified support staff with appropriate facilities to carry out the required duties and responsibilities in a timely manner.

6) The ability to effectively communicate with appropriate project contractors and agency personnel.

d) The IEM duties shall consist of the following:

1) Prior to construction, become thoroughly familiar with all pertinent Project documents (site-specific drawings, relevant plans, narrative mitigation and monitoring plan documents etc.).

2) Prior to construction, become thoroughly familiar with the terms and conditions of the Army Corps of Engineers permit, the 401 WQC, WPA permits and any local by-law permits for the project.

3) Prior to construction, become thoroughly familiar with the physical and geographic features of the Project.

4) During construction, consult with EM on field decisions concerning the appropriate construction methods to protect Waters of the Commonwealth. Decisions will be based on the field conditions at the time, including time of year, flow conditions, bank conditions, substrate, soils, slopes, etc. Disagreements as to methods will be subject to the decision of the MassDEP Project Manager.

5) During construction, be available on a timely basis to make decisions promptly so as not to delay construction. If the IEM is not available on a timely basis, construction may proceed as long as no action will be taken in violation of the WQC.

6) Maintain whatever records and photographs are necessary for the recording of observations.

7) Will perform site inspections and review project status, at minimum on a weekly basis, and will report to MassDEP verbally and by written report on a monthly basis or more frequently as necessary.

e) It is expected that the IEM will work with the Project EM to identify and avoid permit compliance problems. If the IEM observes a violation that poses an immediate threat to a protected wetland resource, he may direct the contractor to cease the activity and/or take immediate corrective action. The IEM may make informal recommendations to Project EM as appropriate to ensure permit compliance. The IEM shall have authority to submit compliance issue reports to MassDEP and may contact MassDEP at any time to report a violation. If the IEM orally reports a violation to MassDEP, the IEM shall provide immediate notice to the Project EM and document the violation in writing.

f) The IEM will submit monthly written reports of activities to the MassDEP Project Manager, with copies to the Project EM and Conservation Commission. These reports shall include a summary of daily activities as they relate to permit conditions or permit condition interpretations, construction and mitigation decisions, future estimated schedule, restoration activities, and other notable or significant activities.

g) The IEM shall report directly to MassDEP. The IEM shall contact the MassDEP Project Manager or other designated staff to obtain clarifications, intent and interpretation of conditions, and to discuss issues of compliance. MassDEP's determination as to interpretations of the WQC conditions shall be binding on the IEM. If a potential non-compliance issue is identified which requires some interpretation of the WQC conditions, the IEM shall consult with MassDEP and determine whether, in fact, a non-compliance issue or violation is present. In turn, MassDEP staff will contact the IEM to solicit comments and input for site-specific issues, permit modifications, and other relevant permitting approvals. MassDEP will coordinate field inspections with the IEM.

h) In order to maintain the proper chain of command for information dispersal, the IEM shall not interact directly with contractor personnel unless they see a potential violation of the WQC conditions that poses an immediate threat to a protected resource. The IEM shall immediately notify the Project EM of any violations of the WQC conditions. Questions and comments posed to the contractor personnel by the IEM shall be referred to the Project EM. The IEM shall not direct the activities of contractor personnel except when he observes a WQC violation that poses an immediate threat to a protected resource, in which case he may direct the contractor to cease the activity and/or take immediate corrective action.

5. MassDEP shall be notified of any change(s) to the plans affecting wetlands or Waters of the Commonwealth. MassDEP will determine whether the change(s) require a modification to this certification.

Findings Pursuant to M.G.L. Chapter 30, Sections 61 to 62H Inclusive (M.E.P.A.):

A FINAL ENVIRONMENTAL IMPACT REPORT (FEIR), EOE # 13246, was filed for this project with the Secretary of Environmental Affairs and noticed in the

Environmental Monitor on September 7, 2005. On October 14, 2005, the Secretary found that the FEIR adequately and properly complies with the Massachusetts Environmental Policy Act and authorized the project to proceed to state permitting. MassDEP accepts the proposed wetland impact mitigation elements contained in the FEIR draft Section 61 Findings, the mitigation and conditions required by the WPA Order of Conditions issued by the Methuen Conservation Commission on April 20, 2006, and incorporates them by reference as additions to the conditions contained in this WQC. Therefore, MassDEP finds that the project proponent has taken all feasible measures to avoid or minimize damage to the environment and that the project is not likely, directly or indirectly, to cause damage to the environment if built in compliance with this WQC.

No Activity may begin prior to the expiration of the appeal period or until a final decision is issued by MassDEP if an appeal is filed.

Failure to comply with this certificate is grounds for enforcement, including civil and criminal penalties, under MGL c.21 s42, MGL c.21A s16, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

This Certification does not relieve the applicant of the obligation to comply with other appropriate state or federal statutes or regulations. This includes, but is not limited to, the U.S. Department of the Army Programmatic General Permit for the Commonwealth of Massachusetts.

Notice of Appeal Rights:

A) Appeal Rights and Time Limits

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by MassDEP when an application is required: (a) the applicant or property owner; (b) any person aggrieved by the decision who has submitted written comments during the public comment period; any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or (d) any governmental body or private organization with a mandate to protect the environment which has submitted written comments during the public comment period. Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to MassDEP, with the appropriate filing fee specified within 310 CMR 4.10 along with a MassDEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Docket Clerk
Office of Administrative Appeals

MassDEP
One Winter Street
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

MassDEP
Northeast Regional Office
205B Lowell Street
Wilmington, MA, 01887

B) Contents of Hearing Request

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 9.10(3):

- (a) the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
- (b) the complete name of the applicant and address of the project;
- (c) the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- (d) if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- (e) a clear and concise statement that an adjudicatory hearing is being requested;
- (f) a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
- (g) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

C) Filing Fee and Address

The hearing request along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

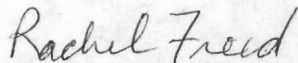
Commonwealth of Massachusetts
MassDEP
Commonwealth Master Lockbox

P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

If you have further questions on this decision, please contact Ms. Elizabeth Sabounjian at (978) 694-3259.

Sincerely,



Rachel Freed
Acting Section Chief
Wetlands & Waterways Program

RF/es

cc: MEPA Office, EOE, 100 Cambridge Street, Suite 900, Boston, MA, 02114
Methuen Conservation Commission, 90 Hampshire Street, Methuen, MA, 01844
Curt Young, WPI, 47 Newton Road, Plaistow, NH, 03865
MA NHESP, DFWELE, One Rabbit Hill Road, Westborough, MA, 01581
US Army Corps. Of Engineers, 696 Virginia Road, Concord, MA, 01742