

SECTION 61 FINDING –Sewer Connection BRP WP 17

PROJECT NAME: Lenox Farms
PROJECT LOCATION: Braintree
PROJECT PROPONENT: Lenox Farms Limited Partnership
EOEA NUMBER: 13658

I. PROJECT DESCRIPTION

The proposed Lenox Farms development includes the construction of 40 residential multi-family buildings and a club house with a total of 338 residential units and associated parking with driveways (the “Project”). The Project will be constructed in one phase with construction expected to last 30 months. The Project site consists of a 50.61 acres site (the “Site”), located in the Town of Braintree and immediately adjacent to the Weymouth town line. There are three existing concrete and metal block structures (currently occupied by Astro-Med) located on the site which is bordered by State Route 3 to the north, the Weymouth town line to the east, land of the Braintree-Weymouth Regional Recreation Conservation District to the South, and Liberty Street to the west. Access to the major areas of developable uplands (including the three existing buildings) is via the existing Lenox Drive, a private drive. Lenox Drive is the only access that currently exists to the three existing buildings. With construction of the project, Lenox Drive will be discontinued and will serve as the private entrance drive to the project.

II. MEPA HISTORY

On behalf of Lenox Farms Limited Partnership (“Project Proponent”), a Single Environmental Impact Report (“SEIR”) was prepared in response to the Certificate of the Secretary of Environmental Affairs on the Expanded Environmental Notification Form, issued on November 30, 2005.

The SEIR was required to address the existing Administrative Consent Order between DEP and the Town of Braintree. Specifically, infiltration/inflow mitigation consisting of the removal of six gallons of flow for each gallon discharged must be accomplished before a permit is issued.

The Secretary issued the Certificate on the SEIR on March 31, 2006, determining that the SEIR adequately and properly complied with MEPA.

III. PROJECT IMPACTS

Sewer

The Project proposes a new connection to the existing Braintree wastewater collection system within Liberty Street, via a pump station and force main. The Project is anticipated to generate approximately 59,804 gpd of domestic wastewater, based on Title V estimates of 110 gpd/bedroom

and 75 gpd/1,000 sf for the Clubhouse (137 one-bedroom units, 201 two-bedroom units and a 6,859 square foot clubhouse). The Project will comply with the Town of Braintree's Administrative Consent Order.

Wetlands

Although the construction of the new sewer line will not directly affect wetland resources, the sewer line will be constructed within the layout of Lenox Drive. The project has obtained an unappealed Order of Conditions from the Braintree Conservation Commission. In accordance with the regulations for the 401 Water Quality Certification Program (314 CMR 9.00) the Project does not need further state review under the 401 program. The Order of Conditions serves as the Section 401 Water Quality Certification for the Project.

The construction of Lenox Drive is anticipated to result in temporary and permanent impacts to 2,770 square feet of bordering vegetated wetlands (BVW) adjacent to the access drive layout.

The wetlands impact analysis included in the SEIR conservatively assumed that construction of the vertical retaining walls adjacent to the BVW would include five feet of temporary disturbances to the edge of the BVW in order to construct the retaining wall. This assumed temporary impact may not occur, or may occur in a reduced area than that assumed in the SEIR.

There are not practicable alternatives to eliminating or minimizing the assumed temporary BVW impacts. The width of Lenox Farms Drive is dictated by the Special Permit issued by the Braintree Planning Board and is the minimum acceptable width per the Braintree Fire Department for the boulevard style entrance drive. As the sole access point to the development, the entrance drive is being constructed with a divided median strip to prevent vehicles from blocking both lanes and ensuring uninterrupted access for emergency vehicles. We have examined realignment of the access drive. Realignment will not substantially reduce the assumed temporary impacts to BVW as the existing BVW lies close to either side of the proposed access drive alignment in several locations along the alignment. Moving the access drive to one side or the other to avoid or further minimize the assumed temporary impacts would not serve to do so – there are “pinch points” along the access drive alignment between the BVW and the property boundary that severely restrict the ability to move the access drive to one side or the other – doing so would only move the assumed wetlands impacts from one side of the access drive to the other.

IV. SPECIFIC MITIGATION MEASURES

Sewer

The Administrative Consent Order (ACO) issued to the Town of Braintree (ACO-NE-01-1001), requires that prior to any new flows added to the Braintree sewer system, existing, extraneous flows (Infiltration and Inflow [I/I]) must be removed from the system at a ratio of 6:1. The Proponent is committed to removing approximately 360,000 gpd of I/I, so that the Project will comply with the

Consent Order, in accordance with the Sewer Agreement between Lenox Farms Limited Partnership and the Town of Braintree. A copy of the executed agreement is attached for reference.

The Proponent, in consultation with the Braintree Water and Sewer Department and the Department, has investigated options for achieving the required I/I reductions. Based on prior work completed by the Town of Braintree in removing illegal sump pump connections and reduce other sources of I/I, there is 30,000 gpd of flow credit available for new connections the South and/or Southeast sewer subareas upgradient of the proposed connection point. The Town has committed to allocating the full 30,000 gpd of I/I credit to the Project.

In addition, with the proponent's assistance, the Town has identified additional sources of removable I/I upgradient of the project site and have committed to implementation of the following measures:

1. Repairs to the Braintree Farm River pump station – elimination of 100,000 gpd wet weather I/I;
2. Commerce Park pump station – removal of 51,000 gpd of I/I; and,
3. Garden Park Street sewer – removal of 15,000 gpd of I/I.

The proposed I/I removal measures will reduce peak flows to provide adequate mitigation for the proposed flows from the Project.

The Project will also provide additional mitigation, at the Town's request, and reconstruct a Braintree Water and Sewer sanitary sewer manhole located in the intersection of Liberty and Middle Street. Currently, a 10" sewer connects into an existing Braintree Water and Sewer manhole at a sharp angle and creates a minor hydraulic back-up. The manhole will be reconstructed with a minimum inside diameter of 5 feet and new invert channels will be constructed to improve the hydraulics through the manhole.

In compliance with the state plumbing code, water conservation devices have been proposed for the entire Project to further reduce wastewater discharges from the original flow estimates.

To address water quality issues, the Project's stormwater runoff will be collected in deep sump catch basins, diverted to a detention and/or retention pond before discharge to bordering vegetated wetland and will comply fully with the DEP Stormwater Management Guidelines. This will result in an improvement in aquifer recharge and stream water quality over the existing conditions at the site.

Wetlands

The proponent has committed to restoring completely the assumed 2,770 square feet of impact to BVW following access drive construction, and in addition has committed to

construction of 1,080 square feet of BVW replication area adjacent to the impacted wetlands.

Mitigation Schedule

The proposed I/I mitigation measures are proposed to be completed by November 1, 2006, well in advance of the completion of Project construction or the occupancy of any residential units.

The proposed wetlands replication area will be completed in 2007, with planting proposed no later than November 30, 2007.

V. FINDINGS

With the implementation of the proposed mitigation measures for the Lenox Farms project as listed above, the Department finds that all practicable and feasible means have been taken to avoid or to minimize potential damage to the environment.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date

By:

AGREEMENT

WHEREAS, the Hanover Company, its affiliate Lenox Farms Limited Partnership, their successors and assigns (collectively "Hanover") seek final water and sewer permits and approvals from the Town of Braintree, its Water/Sewer Department (collectively "Town") and a MassDEP Sewer Connection Permit from the Department of Environmental Protection ("DEP") to construct Hanover's 338-unit residential development, known as "Lenox Farms," approved by the Braintree Planning Board, Decision No. 05-15 dated June 20, 2006;

WHEREAS, the MassDEP Sewer Connection Permit (the "DEP sewer connection permit") and the Town sewer permit(s) are for Lenox Farms' proposed discharge of approximately 60,000 gallons per day ("gpd") of wastewater flow to the Town's sewer system;

WHEREAS, the Town entered into an Administrative Consent Order ("ACO") with DEP requiring that new flows to the Town sanitary sewer first be mitigated by the reduction of excessive infiltration and inflow ("I/I") in the Town's sewer system;

WHEREAS, the ACO permits the Town 500 gpd of new sanitary flow for the removal of a residential sump pump and one gallon of new flow for every six (6) gallons of other I/I reduction work that is completed;

WHEREAS, the Massachusetts Environmental Policy Act ("MEPA") requires that the DEP sewer connection permit for Lenox Farms contain a Section 61 finding that Lenox Farm's potential adverse environmental impacts have been either avoided or mitigated

WHEREAS, in order for Hanover and Lenox Farms to fulfill its Section 61 obligation, DEP requires that Hanover and Lenox Farms provide mitigation for the permitted discharges to public sewer;

WHEREAS, during the MEPA process, Hanover committed that Lenox Farms will comply with the present requirements of the ACO and mitigate impact to the Town and its sewer system;

WHEREAS, in order for DEP to issue the appropriate sewer extension/connection permit and Section 61 finding for Lenox Farms, DEP requires Hanover to provide documentation, developed in cooperation with the Town, of the work performed or to be performed on the Town's sewer system to identify and reduce excessive infiltration and eliminate illegal inflow sources to offset the proposed 60,000 gpd wastewater flow from Lenox Farms;

WHEREAS, on June 15, 2006, authorized representatives of DEP, the Town and Hanover met and reviewed the amount of mitigation completed by the Town and the flow credit available for allocation to Lenox Farms;

WHEREAS, based upon prior work done by the Town to remove illegal sump pumps and reduce other sources of I/I, 30,000 gpd of flow credit (the "flow credit") is available to Lenox Farms and/or for new connections in the South and/or Southeast sewer subareas, upgradient of Lenox Farms;

WHEREAS, presently there are not sufficient flow reductions in the Town sewer system upgradient of the Lenox Farms site to fully offset the total design flows (approximately 60,000 gpd) from Lenox Farms;

WHEREAS, on June 15, 2006, it was agreed that additional I/I reduction work would be needed to offset the additional 30,000 gpd of flow from Lenox Farms, assuming the Town's assignment of the full 30,000 gpd flow credit to Lenox Farms (60,000 gpd minus 30,000 gpd = 30,000 gpd);

WHEREAS, Hanover (through its expert Woodward and Curran) and the Town identified and presented to DEP representatives, on June 15, 2006, additional sources of removable I/I upgradient of Lenox Farms. See Woodward and Curran presentation booklet dated June 15, 2006, attached and incorporated herein as Exhibit A;

WHEREAS, On June 15, 2006, Hanover and the Town described to DEP representatives an I/I Reduction Program that Hanover and the Town believe will reduce I/I upgradient of Lenox Farms and provide the required mitigation for Lenox Farms [specifically, removal of six (6) times the net additional flow, or $6 \times 30,000$ gallons = 180,000 gallons of I/I];

WHEREAS, the proposed I/I Reduction Program consists of the following: (a) investigation and/or repairs tributary to Farm River Pump Station where pumped flows are estimated up to 100,000 gpd during storm events; (b) investigation and/or removal of approximately 50,000 gpd of I/I at the Commerce Park Pump Station and tributary area; and (c) investigation and/or removal of 15,000 gpd at Garden Park (collectively the "I/I Reduction Program");

WHEREAS, per correspondence from DEP dated July 19, 2006, attached and incorporated herein as Exhibit B, DEP agrees, based upon information provided on June 15, 2006, that the expected reductions in I/I from the I/I Reduction Program are sufficient to offset the impacts of Lenox Farm's sanitary flows on the sewer system;

WHEREAS, some of the inflow is delayed over several days, and therefore, maximum daily flow reductions of the I/I Reduction Program may not represent total inflow removed; however, the I/I Reduction Program will result in sufficient reduction in peak flows to offset the proposed wastewater flow from Lenox Farms;

WHEREAS, as set forth in Exhibit B, DEP was encouraged by the Town's efforts to complete the Howie Road I/I reduction project that was required under the ACO that will reduce the frequency, volume and duration of overflows at the Town's Allen Street Siphon;

WHEREAS, per Exhibit B, DEP determined that prior to issuing a sewer connection permit for Lenox Farms, the Town, through its duly authorized agent or representative, must provide the following documentation to DEP:

1. Acknowledgement of the amount of Sewer Bank credit accumulated in the sewer subareas upgradient of Lenox Farms that the Town intends to allocate to Lenox Farms;
2. The Town's approval of the estimated I/I reduction to be achieved by the I/I Reduction Program (Farm River, Commerce Park, Garden Park);
3. Proposed methods of repair and a schedule for completion of the I/I Reduction Program presented by Woodward & Curran on 6/15/06. See Exhibit A; and
4. A commitment by the Town to complete the Howie Road project required under the ACO including the new deadline for completion of the Howie Road project.

WHEREAS, per Exhibit B, DEP determined that if Hanover chooses to apply for a sewer connection permit prior to completion of the I/I Reduction Program, Hanover must submit a letter with the sewer connection permit application expressing Hanover's willingness to accept a permit to construct sewers with the initial authorization to discharge limited to the flow allocated from the Sewer Bank (30,000 gpd - the "initial flow limit") and that, subject to public comment, DEP could propose a permit with this restriction;

WHEREAS, per Exhibit B, Hanover would be authorized to discharge increases in flow above the initial flow limit provided that DEP receives certification by the Town that further I/I reduction work has been completed, the work was effective in reducing I/I as estimated, and the completed work represents the mitigation required for Lenox Farms. Alternatively, per Exhibit B, Hanover could wait for completion of the I/I Reduction Program and obtain a permit to construct sewers and a permit to discharge 60,000 gpd of wastewater flow;

NOW THEREFORE, for valuable consideration and the mutual exchange of promises, Hanover and the Town agree and contract as follows:

1. The content of the above WHEREAS clauses is true and correct, to the best of the knowledge of the Town and Hanover;
2. The Town will complete, or cause to be completed, at the Town's expense, the I/I Reduction Program described in Exhibits A and B (the "scope of work");
3. The scope of work will be commenced upon signing of this Agreement and will proceed diligently and continuously until completed by the Town;
4. The Town will enter into a contract with a pipeline contractor to complete the I/I Reduction Program, the I/I rehabilitation and repair of defects set forth in Exhibit A. Said contract with a pipeline contractor will be executed prior to the conclusion of the Sewer Extension Permit public comment period. In lieu of entering into a contract with a pipeline contractor, the Town agrees to conduct the I/I Reduction Program scope of work with Town employees prior to the conclusion of the Sewer Extension Permit public comment period;

5. Within ten (10) days of signing this Agreement, the Town, through its duly authorized agent or representative, will provide DEP with the written documentation (number items 1 through 4) requested by DEP on page 3 of Exhibit B;
6. Within ten (10) days of signing of this Agreement, the Town, through its duly authorized agent or representative, will sign the Lenox Farms Sewer Extension Permit application under item E. Approval Recommended;
7. As set forth in the final sentence of the penultimate paragraph of Exhibit B, the Town shall complete, or cause to be completed, at the Town's expense, the scope of work (the I/I Reduction Program) so that Hanover can obtain all Town and DEP permits and approvals necessary for Lenox Farms' approximate 60,000 gallons per day discharge of wastewater flow into the Town's sewer system;
8. Upon completion of the scope of work (the I/I Reduction Program), The Town, through its duly authorized agent, shall provide DEP with the additional certifications set forth in the penultimate paragraph on page 3 of Exhibit B, specifically, that I/I work (the I/I Reduction Program) has been completed, that the work was effective in reducing I/I as estimated in the I/I Reduction Program and that the completed work represents the mitigation required for Lenox Farms to receive state and local sewer connection permits;
9. The Town hereby agrees to accept into its sewer system the approximate 60,000 gpd of wastewater flow from Lenox Farms;
10. The Town hereby grants to Hanover and its Lenox Farms residential development, the 30,000 gpd flow credit, and hereby authorizes Hanover's and Lenox Farms' withdrawal of the flow credit (30,000 gpd) required under the ACO from the Sewer Bank;
11. Upon the Town's accomplishment of all of the above, and the issuance of final state and local permits for Lenox Farms' discharge of approximately 60,000 gpd of wastewater flow into the Town sewer system, Hanover will pay to the Town total water/sewer fees in the amount of \$539,218 as itemized on Exhibit C, attached and incorporated herein (the "total fee"), but subtracting from said fee Hanover's documented 2006 expenses in identifying the sources of I/I set forth in Exhibit A, including Woodward and Curran and

Daylor Consulting fees. Hanover will provide to the Town copies of invoices or other evidence of said expenses; and

12. The undersigned warrant and represent that he/she is duly authorized on behalf of the designated principal to execute this agreement on behalf of the principal. This agreement contains the complete agreement of the parties with respect to the performance of I/I, performance of the I/I Reduction Program and the issuance of final water/sewer permits for Lenox Farms. In the event of breach of this agreement, the non-breaching party shall have available all remedies at law and in equity. The provisions of this agreement are severable and the invalidity of any provision shall not affect the validity or enforceability of any other provision of this agreement.

WHEREFORE, the duly authorized agent(s) and representative(s) of Hanover and the Town have affixed their signatures under seal this ___ day of August 2006

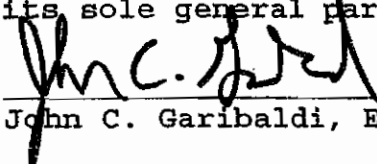
LENOX FARMS LIMITED PARTNERSHIP,
a Texas limited partnership

By: Hanover/Metlife G.P. LLC,
its sole general partner

By: Hanover/MetLife Master Limited Partnership,
its sole manager/member

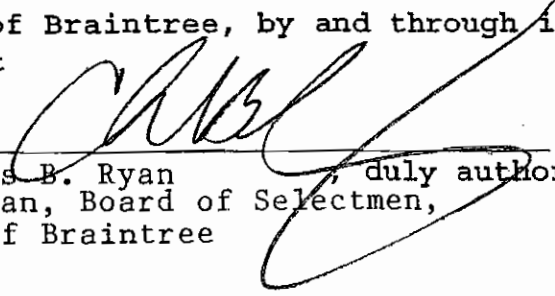
By: THC Development Partners 2000 LP,
its sole general partner

By: THC Capital G.P. LLC,
its sole general partner

By: 
John C. Garibaldi, Executive Vice President

The Town of Braintree, by and through its Water/Sewer
Department

BY:


Charles B. Ryan, duly authorized
Chairman, Board of Selectmen,
Town of Braintree