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March 14, 2008

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

PROJECT NAME : Westport Lakes
PROJECT MUNICIPALITY : Westport
PROJECT WATERSHED : Buzzards Bay
EOEA NUMBER : 12703
PROJECT PROPONENT : American Links Courses
DATE NOTICED IN MONITOR : February 6, 2008

As Secretary of Energy and Environmental Affairs, I determine that the Draft Environmental Impact Report (DEIR) submitted on the above project **adequately and properly** complies with the Massachusetts Environmental Policy Act (MGL, c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). However, for the Final Environmental Impact Report (FEIR) to be found adequate, I am requiring the proponent to provide additional information in the FEIR specifically pertaining to wetlands, rare species, traffic, historic and archaeological resources and mitigation. This information is necessary to ensure that the requirements of 301 CMR 11.07 are met, that the aspects and issues of the entire project have been clearly described, that a range of project alternatives have been fully analyzed, that the proponent has committed to a set of mitigation that will allow the state agencies to satisfy their Section 61 obligations, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency action.

Future Development

The DEIR document contains a conceptual development plan for the potential future development (Phase II) of a 139-acre development parcel (Lot 33) located in the western portion of the project site.

According to information provided by the proponent, a Conservation Restriction proposed by the proponent limits the building envelope for Lott #33 to approximately 64 acres. Under current zoning, Lot 33 may be developed to accommodate an additional 40 units of clustered residential housing units, approximately 3,000 lf of internal roadway, a community club house building and related utilities and stormwater management infrastructure.

After considering the factors cited in Section 11.01 of the MEPA regulations, I must consider the environmental impacts associated with the proposed Westport Lakes residential development project and the potential future development of Lot #33 (full build-out project) as a "common plan or undertaking". Upon further discussions with the permitting agencies and the proponent, I am requiring the proponent to file a Notice of Project Change (NPC) with the MEPA Office for any future development proposal that may be proposed for Lot #33. The NPC will need to discuss both the potential cumulative infrastructure and environmental impacts, including but not limited to traffic, water supply, wastewater, rare species, wetlands and site planning issues, arising out of the currently proposed Phase I development, the Phase II development of the Lot #33 development parcel, and any other subsequent additional development proposed for the project site.

Project Description

The proponent proposes to construct a standard residential subdivision consisting of a total of 31 single family houses, and approximately 3,500 linear foot (lf) roadway and stormwater infrastructure previously constructed as part of the project activities proposed in the first NPC (NPC1) reviewed by the MEPA Office in June 2002. The proponent has proposed a Conservation Restriction that will locate 29 building lots within a 31-acre building envelope. Two building lots (Lot # 30, 31) will be located along the project site's Mouse Hill Road frontage. The project's water supply demand (9,900 gallons per day (gpd)) and wastewater flows (9,900 gpd) will be served by individual on-site water supply wells and on-site subsurface sewage disposal systems in accordance with Massachusetts Title 5 regulations, respectively.

The project as currently proposed is undergoing MEPA review pursuant to Section 11.03 (2)(b)(2) of the MEPA regulations because the project involves the alteration of designated significant habitat and the taking of an endangered or threatened species. This project may also result in the alteration of will more than 25 acres of land and therefore is undergoing MEPA review pursuant to Section 11.03 (1)(b)(1) of the MEPA regulations. The project continues to require an access permit from the Massachusetts Highway Department (MassHighway) for access to Route 177, and a new Order of Conditions from the Westport Conservation Commission for the currently proposed residential portion of the project (and hence a Superseding Order from DEP if the local Order were appealed). The project may also require a Groundwater Discharge Permit, a Water Management Act Permit and a Drinking Water Program Permit from the Department of Environmental Protection (MassDEP). The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over one acre.

If blasting will be required during project construction, the proponent will need to prepare a blast design plan pursuant to the Board of Fire Protection Regulations (577 CMR 13.09) for the proposed construction of roads, houses and utilities within the project site. Blasting mixtures that include perchlorate have been identified as the source of contamination in many Massachusetts public water supplies and thus should be discouraged from use in the project watershed.

Project History

Originally proposed in a February 2002 Environmental Notification Form (ENF), the project included the development of a 9-hole golf course, club house, greens keeper's house and maintenance building, and 72 units of clustered residential development together with a 4-unit single family subdivision on a 216-acre site located near the intersection of Route 88 and Route 177 in Westport. The Secretary's Certificate on the ENF (March 2002) required the proponent to prepare an Environmental Impacts Report (EIR) for the project and to provide additional information regarding the proposed project's potential impacts to wetlands, rare species, wastewater, water management, historic resources, agricultural land areas, and historical and archeological resources. The originally proposed project has undergone MEPA review pursuant to Section 11.03 (1)b(1) and 11.03(b)(1)(2) because the project involved alteration of more than 25 acres of land and will create five or more acres of impervious surface. It also appeared likely that this 9-hole golf course/residential development project would exceed the mandatory EIR threshold pursuant to Section 11.03 (3)(a)(1)(a) of the MEPA regulations because the golf course portion of the project involved the removal of significant amounts of wetlands tree canopy, in addition to the alteration of bordering vegetated wetlands (BVW).

1st Notice of Project Change (NPC1)

The first Notice of Project Change document (NPC1) was submitted to the MEPA Office in June 2002 and proposed to revise the project to eliminate the 9-hole golf course and to construct only the residential development portion of the project including: 72 units of clustered residential development together with a 4 unit single family subdivision, and a 3,500 lf roadway and associated infrastructure to service the residential development. As a result, the proponent significantly reduced the project's impacts to wetlands, tree canopy alteration, land alteration, and traffic. The Secretary's Certificate on the NPC1 (July 2002) determined that the proposed project change did not require further MEPA review, but required the proponent to consult with NHSEP to develop a satisfactory site survey plan for all rare species habitat located on the site. The Certificate on the NPC1 also required the proponent to file an NPC with the MEPA Office for any additional changes to the proposed project or any future development proposals for the undeveloped areas of the site. The proposed NPC1 project received an Order of Conditions from the Westport Conservation Commission for the roadway and stormwater infrastructure elements, which was appealed for a Superseding Order of Conditions (SOC) from MassDEP. In January 2003, MassDEP issued a SOC (SE 80-1121) and a Water Management Act Permit for the construction of 3,500 of roadway, two wetlands crossings and infrastructure for the project as proposed in the NPC1 submittal.

2nd Notice of Project Change (NPC2)

A second Notice of Project Change (NPC2) was submitted to the MEPA Office in April 2004 and proposed to re-incorporate the construction of a 9-hole golf course with the proponent's residential development project. The proposed 9-hole golf course included a clubhouse, greens keeper's residence and maintenance building. According to the information contained in the NPC2 submittal, the proponent's residential development project was further revised subsequent to the issuance of the Secretary's Certificate on the NPC1, to include a reduction in the total number of residential housing units from 76 to 47 (21 duplex units, 5 detached single family units).

In their comments on the NPC 2 submittal, NHESP indicated that the proponent did not consult with NHESP prior to proceeding with the construction of the 3,500 lf roadway and associated infrastructure to service the project's residential development elements. The roadway construction resulted in a "take" of Four-toed Salamanders and Spotted Turtles. According to NHESP, the 9-hole golf course proposed in the NPC2 submittal would result in an additional "take" of these rare species. NHESP indicated that a Conservation and Management Permit would be required for the completed roadway construction (after-the-fact) pursuant to Massachusetts Endangered Species Act (MESA) permitting requirements (310 CMR 10.23). NHESP required the proponent to cease any/all additional construction activities within the project site until MESA permitting issues pertaining to the residential development and proposed 9-hole golf course project elements could be resolved. NHESP required the proponent to provide additional information to NHESP to determine the permitability of the proposed 9-hole golf course project. The proponent received an Order of Conditions from the Westport Conservation Commission for the 9-hole golf course, which was appealed for an SOC from MassDEP. According to MassDEP, the SOC (SE 80-1290) for the proposed golf course project element was withdrawn, pending completion of the MEPA process, in response to the proponent's subsequent decision to submit a NPC to the MEPA Office to eliminate the 9-hole golf course element from the project plan.

3rd Notice of Project Change (NPC3)

In August 2006, the proponent filed a third Notice of Project Change (NPC3) proposing to eliminate the construction of the 9-hole golf course and to only construct a standard residential subdivision consisting of 32 single family houses using the 3,500 linear foot (lf) roadway and stormwater infrastructure previously constructed part of the first NPC (NPC1) project activities (June 2002). The project's water supply demand (9,900 gallons per day (gpd)) and wastewater flows (9,900 gpd) will be served by individual on-site water supply wells and on-site subsurface sewage disposal systems in accordance with Massachusetts Title 5 regulations, respectively. The Secretary's Certificate on the NPC3 submittal

Scope for Final Environmental Impact Report

Project Description and Permitting

The FEIR should include a thorough description of the proposed residential subdivision development project and each state permit necessary for the project as proposed.

The FEIR should include a reasonably scaled map (1:200) that clearly illustrates the extent of building envelope and future development areas, bordering and isolated wetland resource areas (BVW, IVW), buffer areas to wetland resources, and areas of the project site that the proponent has proposed to place under a Conservation Restriction (CR). I strongly encourage the proponent to consider placing deed restrictions, to include certified vernal pools, if any, and the uplands around them, on any individual residential properties that will be located within 600 feet of any vernal pools or within the 100-foot wetlands buffer zone as a method for avoiding future impacts from homeowner activities.

The FEIR should clearly identify the proposed locations of construction activities and project elements that may be allowed within the project's conservation restriction area including but not limited to water supply wells, Title 5 septic systems, walking trails, roadway construction, and wetlands replication. The FEIR should also identify individual properties that may be wholly or partially located within wetland resource areas. The DEIR should include an update on the local permitting process, and should discuss how any local requirements impact project design. The DEIR should contain sufficient information for the state permitting agencies to evaluate the project in light of their Section 61 obligations.

Wetlands

The project as currently designed involves two previously constructed wetlands crossings associated with the project's main internal roadway (Westport Lakes Road) which extends 3,000 lf north from the Route 177 to a cul-de-sac located in the center of the project site. According to the information proved in the DEIR document, the construction of Westport Lakes Road resulted in the alteration of approximately 3,300 sf of bordering vegetated wetlands (BVW).

The proponent has proposed to provide approximately 5,000 sf (1.5:1) of on-site wetlands replication, to be located adjacent to Lots #17, 18 and 19) as mitigation for the project's impacts to wetlands resource areas. In their comments, MassDEP has indicated that the Superseding Order of Conditions (SOC) issued in January 2003 incorporated the proponent's commitment to construct approximately 11,000 sf of on-site wetlands mitigation. The FEIR should respond to MassDEP's comments and resolve this discrepancy. On a reasonably scaled (1:200) map, the FEIR should identify the impacts to wetlands resource areas associated with the proponent's previously completed roadway and stormwater management infrastructure construction (NPC1) and the potential environmental impacts anticipated from the proposed residential construction activities.

The FEIR should also identify any proposed wetland replication location(s), and their elevations. The project site also contains two vernal pools (Vernal Pool #1, Vernal Pool #2) that meet NHESP's Guidelines for Vernal Pool Certification. These vernal pool resource areas are to be included within the proponent's proposed 164-acre conservation restriction (CR) area.

Rare Species

According to the comments received from NHESP on prior submittals for this project, the project site lies in close proximity to a number of rare wildlife species: Marbled Salamander (*Ambystoma opacum*), Four-toed Salamander (*Hemidactylium scur*), Eastern Box Turtle (*Terrepenne Carolina*), and Mystic Valley Amphipod (*Crangonyx aberrans*). Although not described in the DEIR document, the NPC3 submittal did provide a description of a Conservation Restriction Plan designed by the proponent to meet the MESA permitting requirements and included:

- the placement of a Conservation Restriction (CR) on approximately 164.2 acres (76%) of the project site to protect wetland resource areas and habitat for the four-toed Salamander,
- a phased funding program (\$119,400.00 total) for habitat protection and/or conservation research to benefit the Four-toed Salamander;
- construction and maintenance of two on-site wildlife road crossings;
- placement of deed restrictions on individual house lots to limit forest clearing; and,
- other conditions to be determined during the MESA permitting and review process.

In their comments on the NPC3 submittal, NHESP requested the proponent to provide to NHESP a recordable conservation restriction plan, a finalized conservation restriction document, identification of the conservation restriction Grantee, and homeowner association documents describing the association's monitoring and maintenance responsibilities. According to NHESP, these documents have not been provided to NHESP. In a separate section of the FEIR document, the proponent must provide a description of a Conservation Restriction Plan designed by the proponent to meet the MESA permitting requirements. This section of the FEIR should include a copy of the proponent's final conservation restriction and open space plan, a final conservation restriction document, identification of the conservation restriction Grantee, and homeowner association documents describing the association's monitoring and maintenance responsibilities. As discussed elsewhere in this Certificate, the FEIR should include a reasonably scaled map that clearly delineates the areas of the project site that the proponent proposes to place under a Conservation Restriction (CR). I strongly encourage the proponent to continue to consult with NHESP in the final design and completion of its conservation restriction plan for the proposed Westport Lakes residential subdivision project.

Historic Resources

According to the comments previously received from the Massachusetts Historical Commission (MHC), the project site contains the Cornell House and Barn (MHC# WSP.538) a historically significant structure included in MHC's *Inventory of Historic and Archeological Assets of the Commonwealth*, and several other historic structures (Macomber House – WSP .541, Macomber-Chase House – WSP .540, Tripp House WSP .539) located within the project site and fronting on Mouse Hill Road. The project area also has high archeological sensitivity and is likely to contain archeologically significant sites associated with Native American occupation of the Dartmouth area. As described in the DEIR document, the proponent completed an intensive (locational) archaeological survey of the project site in January 2007 and did not identify the presence of significant historic or archaeological resources within the project site. The proponent has proposed to renovate and reuse the Cornell House, and remove the barn structure. The FEIR should include an update of the proponent's consultations with MHC regarding the final disposition of the barn building and the other historic structures (Macomber House, Macomber-Chase House, Tripp House) located within the project site and fronting on Mouse Hill Road.

Transportation

The primary site drive for the proposed project is located on Route 177 (American Legion Highway). Mouse Mill Road will also be used to provide access to 2 the building lots (#30, #31) located along the eastern boundary of the project site. In consultation with MassHighway, the proponent has committed to improving access to the project site by constructing a paved shoulder/by-pass lane on the south side of Route 177 opposite the project's site drive. The FEIR should include reasonably scaled concept plans for the paved should work on Route 177, and identify any necessary drainage improvements. The FEIR should discuss the need for any roadway improvements to the Route 177/Mouse Mill Road intersection. According to the information proved in the DEIR document, the proponent has also proposed pedestrian accommodations including on-site bicycle facilities, a safe onsite pedestrian circulation plan including project connections to existing pedestrian and bicycle networks located within the vicinity of the project site, and will promote the use of the Southeastern Regional Transit Authority's Route 6 bus by posting bus schedules in common areas throughout the project site. The FEIR should respond to the comment s received from MassHighway and include a discussion of the proponent's efforts to work with the Town of Westport's Council on Aging to identify shuttle service opportunities for the project residents. The FEIR will need to include a discussion of the proponent's Traffic mitigation and TDM commitments for the proposed Westport Lakes residential development project.


Mitigation/ Section 61 Findings

The FEIR must include a summary and explanation of all environmental mitigation to which the proponent is committed. This chapter on mitigation must also include a Draft Section 61 Finding for all state permits, and should contain a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation, based on the construction phases of the project, must also be included.

Comments

In order to ensure that the issues raised by commenters are addressed, the FEIR should include a response to comments. This directive is not intended to, and shall not be construed to enlarge the scope of the FEIR beyond what has been expressly identified in the initial scoping certificate or this certificate. I recommend that the Town use either an indexed response to comments format, or else direct narrative response.

March 14, 2008
Date



Ian A. Bowles, Secretary

Comments received:

03/12/08	Natural Heritage and Endangered Species Program (NHESP)
03/07/07	Massachusetts Department of Environmental Protection (MassDEP) – SERO
03/07/08	Westport River Watershed Alliance
03/13/08	Massachusetts Highway Department (MassHighway)

IAB/NCZ/ncz
DEIR #12703