



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

June 20, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME: Village at Pine Creek
PROJECT MUNICIPALITY: Norfolk
PROJECT WATERSHED: Charles River
EEA NUMBER: 14250
PROJECT PROPONENT: Pine Creek Development Corporation
DATE NOTICED IN MONITOR: May 21, 2008

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 hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

Project Description

As outlined in the Environmental Notification Form (ENF), the project involves the construction of a 14-lot residential subdivision on a 34.4-acre parcel with access onto Juniper Lane and Village Green in Norfolk. The project site is mostly wooded and an intermittent stream and associated red maple swamp bisect the site, necessitating a bridge crossing to provide an internal roadway through the development. The project site falls within Priority and Estimated Habitat for the Eastern Box Turtle (*Terrapine carolina*), a reptile listed as a Species of Special Concern pursuant to the Massachusetts Endangered Species Act (MESA, MGL c. 131A) and its implementing regulations (321 CMR 10.00).

Jurisdiction

The project is undergoing environmental review pursuant to Section 11.03(2)(b)(2) of the MEPA regulations because it will result in a "take" of a species protected under the

MESA. The project requires the following permits and/or approvals: a National Pollutant Discharge Elimination System (NPDES) General Permit from the U.S. Environmental Protection Agency (EPA); a Final Order of Conditions from the Department of Environmental Protection (MassDEP); a Conservation and Management Permit from the Division of Fisheries and Wildlife (DFW), Natural Heritage and Endangered Species Program (NHESP); an Order of Conditions under the local wetlands bylaw from the Norfolk Conservation Commission; Definitive Plan Approval from the Norfolk Planning Board; approval from the Norfolk Board of Health; and a Special Permit from the Norfolk Zoning Board of Appeals.

Because the Proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction is limited to those aspects of the project that may cause significant Damage to the Environment and that are within the subject matter of required or potentially required state permits. In this case, jurisdiction extends to wetlands, stormwater and rare species.

Stormwater

The project will result in 4.3 acres of new impervious surface at the site. The proposed stormwater management system for the project has been designed to exceed the performance standards in MassDEP's recently revised Stormwater Management Regulations (January 2, 2008). During the Notice of Intent (NOI) and local wetland bylaw public review process, two peer reviews confirmed compliance with the MassDEP stormwater standards.

Wetlands

The Proponent submitted a NOI for the project to the Norfolk Conservation Commission for review under the Wetlands Protection Act (WPA) and the Norfolk Local Wetlands Bylaw that was denied in October 2002. The Proponent then submitted a request for a Superceding Order of Conditions (SOC) to MassDEP, which was issued in April 2003. The SOC was appealed by two residents who requested an Adjudicatory Hearing. Since the review under the local wetlands bylaw had not been resolved, the Division of Administrative Law Appeals (DALA) issued a stay of the SOC appeal on the matter. The project was approved by the Norfolk Conservation Commission in October 2007. Based on the Commission's approval under the local Bylaw, the DALA Adjudicatory Hearing is scheduled for July 2008, after which MassDEP can issue a Final Order of Conditions.

The project as outlined in the ENF will result in the alteration of 3,172 square feet (sf) of bordering vegetated wetlands (BVW) and 31 linear feet (lf) of Bank. 640 sf of BVW will be directly altered as a result of dredge and fill activity associated with the construction and maintenance of bridge footings at the road crossing, and 2,532 sf may be altered as a result of tree removal and shading. The installation of stormwater management facilities will result in buffer zone impacts. No houses are proposed to be located within the buffer zone to jurisdictional resource areas.

The proposed wetlands crossing is necessary due to a Town of Norfolk bylaw requiring a through-road with two points of access for every subdivision. Since the intermittent stream bisects the property, there is no way that construction of the internal roadway can avoid impacts to BVW. The Proponent requested a waiver from the Norfolk Subdivision Rules and Regulations requirement for a through road; the waiver request was denied by the Planning Board. The bridge has been designed to cross the wetland at its most narrow point to avoid and minimize wetland impacts and the proposed crossing is the minimum width allowed by the Town of Norfolk. The crossing also features retaining walls in order to minimize wetland impacts. The Proponent proposes to create a 6,441 sf wetland replication area of wood swamp and intermittent stream as mitigation for wetland impacts.

Rare Species

The project will result in a prohibited take of the Eastern Box Turtle because it will alter more than five acres of estimated habitat. The take will occur due to disruption of the nesting, feeding, breeding or migratory habitat. As part of the NOI hearing process with the Norfolk Conservation Commission, the Commission's consultant conducted a survey for box turtle and observed no turtles. The results of the survey have been submitted to NHESP.

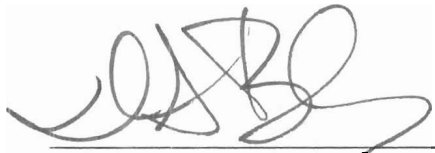
Through consultation with NHESP, the Proponent has minimized impacts to rare species habitat to the maximum extent possible by minimizing lot sizes and reducing the number of lots originally proposed. The Proponent proposes to place approximately 19 acres of turtle habitat on-site and 4.7 acres off-site into permanent protection through a Conservation Restriction (CR). The Proponent will also implement a forest management plan to improve forest habitat value for Eastern Box Turtle and will manage invasive exotic plants to improve the overall quality of on-site habitat. During construction, the Proponent will avoid impacts to turtle habitat through the use of turtle exclusion fencing and daily monitoring. In its comments on the ENF, NHESP states that the project appears to meet the performance standards for issuance of a Conservation and Management Permit. I note that the Town of Norfolk has several concerns regarding mitigation proposed for rare species impacts. As the Conservation and Management Permit process is ongoing, I will forward a copy of the Commission's comment letter and this Certificate to NHESP for review. The Proponent should continue to coordinate with NHESP during the permitting process regarding the need for additional survey work or mitigation.

Conclusion

Based on a review of the information provided by the Proponent and after consultation with the relevant public agencies, I find that the potential impacts of this project do not warrant further MEPA review.

June 20, 2008

Date



Ian A. Bowles

Cc: Audra Valaitis
NHESP
One Rabbit Hill Road
Westborough, MA 01581

Comments Received:

5/28/2008 Massachusetts Historical Commission
6/5/2008 **Department of Environmental Protection, Central Regional Office**
6/6/2008 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species
Program
6/6/2008 Department of Environmental Protection, Northeast Regional Office
6/10/2008 Town of Norfolk, Conservation Commission
6/12/2008 Town of Norfolk, Conservation Commission

IAB/BA/ba