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July 25, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
NOTICE OF PROJECT CHANGE

PROJECT NAME : Tall Timbers Estates (formerly reviewed as Fountain Knoll Estates)
PROJECT MUNICIPALITY : Kingston
PROJECT WATERSHED : South Coastal
EOEA NUMBER : 13395
PROJECT PROPONENT : **Tall Timbers** Estates, LLC (formerly Fountain Knoll Knoll Estates, LLC)
DATE NOTICED IN MONITOR : June 25, 2007

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).

MEPA History

The project was previously the subject of an Expanded Environmental Notification Form (ENF) that described the project as a 156-home single family residential development (including 51 homes restricted to occupants who are 55 years of age and older), and associated internal roadways and stormwater management facilities on a 167-acre site located on the north side of Elm Street. The project would have been developed pursuant to M.G.L. c.40 B s. 22 and contain 39 affordable housing units. Most of the site has been used as a sand and gravel and concrete batch operation for approximately 40 years. The northern portion of the site has remained undeveloped and is heavily wooded. The project site contains approximately 36 acres of wetlands that are not proposed to be altered, including Fountainhead Brook, which flows northerly through the northwestern portion of the site. The project site is also located within Zone II of a public water supply.

The project was subject to environmental review pursuant to Section 11.03 (1)(a)(2) and (1)(b)(1) because it would have created ten or more acres of impervious area and directly alter 25 or more acres of land. The project was seeking a 40B permit through the state Housing Appeals Committee (HAC) and required a Conservation Permit under the Massachusetts Endangered Species Act from the Division of Fisheries and Wildlife (DFW) Natural Heritage and Endangered Species Program (NHESP). The project also required an Order of Conditions from the Kingston Conservation Commission (and hence, a Superseding Order of Conditions from DEP if the local order was appealed). Because the project would have undergone review by the HAC, MEPA had broad scope jurisdiction which extended to all significant environmental impacts potentially resulting from the project, including land alteration, rare species, wetlands and drainage, water supply and wastewater generation, and historic and archaeological resources.

The Certificate on the Expanded ENF issued on December 17, 2004 required the submission of a mandatory EIR because the project, as proposed, would have created ten or more acres of new impervious area.

Project Change Description

As described in the Notice of Project change (NPC), the project change entails a significant reduction in the project development program from a 156-unit to an 80-unit single-family residential development. The project is proposed to be developed in three phases over a five-year period. The proponent has added approximately 11 acres of land to the project site. According to the NPC, the project, as now proposed, will result in a total of 28 acres of land alteration and 11.4 acres of impervious surface, in comparison to 30 acres and 16.2 acres, respectively, for the previously reviewed project. Likewise, anticipated water use and wastewater generation would decrease from 46,000 gallons per day (gpd) to 35,200 gpd. The NPC states that wastewater generated by the project will be directed to individual on-site septic systems designed to comply with Title 5 requirements.

I note that the original Expanded ENF indicated that the project site contains 2.5 acres of existing impervious surface associated with the sand and gravel and concrete batch operation. Hence, the project as now proposed will add 9.9 acres of new impervious surface, thereby reducing this impact to a level that is just below the threshold for a mandatory EIR. While I encourage the proponent to explore ways that impervious surfaces could be further minimized, I am satisfied that the proponent has adequately addressed the items contained in the Scope for the EIR contained in the Certificate on the Expanded ENF, to the extent that they are within MEPA jurisdiction. Therefore, I hereby rescind the requirement that the proponent submit an EIR for this project.

Review of the NPC

Project Alternatives

The NPC has served to address the scope item that required the proponent conduct an analysis of project alternatives in the DEIR. I commend the proponent for proposing a project that is smaller and that will result in lesser impacts to the environment by concentrating development on the previously disturbed southern portions of the site and retaining the

undisturbed northern areas as open space. However, while the currently proposed project is smaller than that previously proposed, the impacts resulting from the project will not be not correspondingly less, such as one might expect from a project in which the proposed number of units has been cut by approximately half. Additionally, while I acknowledge that the project is seeking to be permitted at the local level as a Planned Residential Development (PRD) with proposed lots that are smaller (minimum lot size of 30,000 to 40,000 square feet with 150-foot frontage) than that required by conventional zoning (minimum lot size of 80,000 square feet with 200-foot frontage), the project nevertheless appears to be a conventional residential subdivision which does not represent a clustered alternative to the originally proposed 156-lot subdivision.

With the above in mind, I strongly encourage the proponent to incorporate high performance/green building and other sustainable design measures as part of the project. Sustainable design can provide environmental and economic benefits for the proponent and future building owners and occupants. The basic elements of a sustainable design program may include, but not be limited to, the following measures:

- Leadership in Energy and Environmental Design (LEED) certification for Homes and Energy Star certification;
- water conservation and reuse of wastewater and stormwater;
- ecological landscaping;
- green roofs;
- use of Low Impact Development (LID) techniques (the proponent may find the following web sites useful www.mass.gov/envir/lid and www.lid-stormwater.net);
- optimization of natural day lighting, passive solar gain, and natural cooling;
- use of energy efficient Heating, Ventilation and Air Conditioning (HVAC) and lighting systems, appliances and other equipment, and use of solar preheating of makeup air;
- favoring building supplies and materials that are non-toxic, made from recycled materials, and made with low embodied energy;
- implementation of a solid waste minimization and management plan; and
- provision of easily accessible and user-friendly recycling system infrastructure.

Rare Species

In its comments, the Natural Heritage and Endangered Species Program (NHESP) has determined that project will result in a “take” of the Eastern Box Turtle and, as a result, will require a Conservation and Management Permit. As part of its Eastern Box Turtle conservation plan, the proponent proposes to permanently protect approximately 159 acres of open space, most of which is turtle habitat, including 56 acres located off-site that is owned by the proponent consisting primarily of cranberry bogs. The proponent will install turtle crossings and barriers to protect the animals from vehicular traffic; implement a plan to protect turtles during construction of the project; restore one cranberry bog as turtle habitat; assure the long-term management of early successional turtle habitat; and conduct a post-conservation study to evaluate the use of road-crossings by turtles. I strongly encourage the proponent to continue to work closely and in cooperation with NHESP during the permitting process to ensure the long-term viability of this species on the project site.

Wetlands and Drainage

Based on the Order of Resource Area Delineation (ORAD) issued by the Kingston Conservation Commission in December 2003, and extended in 2006, the project site contains Bordering Vegetated Wetlands (BVW), Inland Bank, Land Under a Water Body/Waterway, Isolated Vegetated Wetlands (potential vernal pools), and Riverfront Area. Although the NPC indicates that the project will not result in the alteration of any wetland resources areas, the Kingston Conservation Commission expects that a Notice of Intent will be filed for this project because the site plans indicate that there will be construction activity and structures within the 100-foot buffer zone.

In its comments, the Kingston Conservation Commission states that it appears that Road B and Lot 17, indicated on the proposed conditions plan, would be constructed in an existing cranberry bog that was confirmed as a wetland resource area in the ORAD. Because the bog was considered a wetland at the time the ORAD was issued and the proponent has not filed a subsequent Request for Determination to revise the delineation of this area, the Conservation Commission still considers the cranberry bog in the general area northeast of the Pine Hill Road cul-de-sac to be a wetland, and any proposed construction would constitute a fill of that bog. If the proponent can prove that the cranberry bog is an upland area, then it is possible that the roadway and house may be permitted with conditions if it is within the 100-foot buffer zone.

It does not appear that vernal pools (potential or confirmed) are shown on the proposed conditions plan submitted with the NPC. Therefore, it is difficult to determine whether the plan was designed to meet the Kingston Wetlands Protection By-law's 100-foot no disturb buffer around these vernal pools. The Kingston Conservation Commission will address this issue during the public hearing for the Notice of Intent (NOI) for the project;

Historic and Archaeological Resources

In its comments, the Massachusetts Historical Commission (MHC) has indicated that, based on its review of the *Report on Intensive Survey Fieldwork* for the project site submitted by Massachusetts Archeological Professionals, the proponent is willing to attempt to avoid two of the three identified archeological sites on the project site, and is willing to donate a preservation restriction for these two sites within a designated open space parcel. The Smith Fuller Homestead site (Cellar Hole #2) and the Daniel Fuller Homestead site (Cellar Hole #3), located adjacent to proposed lots #40 and 43 respectively, are proposed to be included in this open space parcel. However, the 30-foot circles drawn around the locations of the cellar holes are arbitrary, and it is uncertain whether the actual archeological site boundaries are encompassed within these proposed avoidance zones. I strongly encourage the proponent to continue to consult and work cooperatively with MHC and the professional archeologists so that the estimated archeological site boundaries (and areas of avoidance) can be established with more confidence and included in the open space parcel.

The third archeological site, the Samuel Fuller Homestead site (Cellar Hole #1) is located in an area proposed for development. Because it appears that it is not feasible to completely avoid this site, the proponent should conduct a site examination archeological survey to provide sufficient information to either avoid, minimize or mitigate any adverse effects to this site. In the NPC, the proponent has committed to conduct this survey.

Conclusion

I am satisfied that any outstanding issues can be resolved during the state and local permitting processes, and that the project change, as proposed in the NPC, does not warrant the submission of an EIR. No further review under MEPA is required.

July 25, 2007

Date


Ian A. Bowles

Comments Received:

06/27/07	Massachusetts Historical Commission
07/12/07	Division of Marine Fisheries
07/13/07	Massachusetts Historical Commission
07/16/07	Department of Environmental Protection Southeast Regional Office
07/16/07	Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program
07/16/07	Jones River Watershed Association
07/16/07	Lisa Michaud
07/17/07	Kingston Conservation Commission
07/17/07	Office of the Kingston Town Planner

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