



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>

September 14, 2007

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

PROJECT NAME : Sutton Residential Open Space Development
 PROJECT MUNICIPALITY : Sutton
 PROJECT WATERSHED : Blackstone
 EOE A NUMBER : 13876
 PROJECT PROPONENT : Hawthorne Land Development, LLC
 DATE NOTICED IN MONITOR : August 8, 2007

As Secretary of Energy and Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). The proponent should prepare a Final Environmental Impact Report (FEIR) as further detailed in the scope below.

The project consists of a 58-unit, single-family residential development and associated infrastructure including on-site water supply wells, a stormwater management system, new sewer mains, on-site roadways and off-site road-widening. The project is located on a 149-acre site, which contains wetlands resource areas and rare species habitat. Approximately 45 acres of the site is currently used as a Christmas tree farm. According to the DEIR, the project will result in approximately 48 acres of land alteration, which includes 9.8 acres of impervious area (5.9 new acres of impervious). The project will also result in 1,759 square feet of Bordering Vegetated Wetlands (BVW) alteration, and loss of ten living public shade trees. Water use is estimated at 27,951 gallons per day (gpd) and wastewater generation is estimated at 25,410 gpd. The project includes construction of 0.56 miles of new sewer mains.

The project is undergoing MEPA review and requires a mandatory EIR pursuant to Section 11.03(1)(a) of the MEPA regulations because, at the time of the ENF filing, direct alteration of 50 or more acres of land was proposed. The project as proposed in the DEIR will result in 48 acres of land alteration. The project is also undergoing MEPA review pursuant to: Section 11.03(1)(b)(2) because it will result in creation of 5 or more acres of impervious area; Section 11.03(1)(b)(4) because it involves conversion of land in active agricultural use,

containing prime agricultural soils, to non-agricultural use; Section 11.03(2)(b)(2) because it will result in a taking of an endangered or threatened species or species of special concern; Section 11.03(5)(b)(3)(c) because it involves construction of a new sewer mains of 1/2 or more miles in length; and Section 11.03(6)(b)(2)(b) because it will result in cutting of 5 or more living public shade trees of 14 or more inches in diameter.

The project will require a Sewer Extension Permit and a 401 Water Quality Certification from the Department of Environmental Protection (MassDEP). The project requires an Order of Conditions from the Sutton Conservation Commission (and, upon appeal only, a Superseding Order from MassDEP). The project will require a Conservation and Management Permit from the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). The project also requires a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit from the U.S. Environmental Protection Agency (EPA).

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required state permits with the potential to cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to wetlands, rare species, wastewater, land, stormwater and drainage.

DEIR Review

Alternatives

The DEIR compares the preferred alternative with the project as proposed in the ENF and with a Yield "by-right" subdivision plan. When compared with the project as proposed in the ENF, the preferred alternative in the DEIR reduces land alteration (from 55.5 acres to 48 acres) and impervious area (from 11.1 acres to 9.8 acres), and increases permanently protected open space (from 90 to 110 acres). Impacts to state-listed rare species habitat are also reduced in the DEIR as a result of changes in roadway layout, a reduction in lot size (from 32,250 sf to 25,500 sf), and elimination of one of the residential lots. The DEIR alternative results in increased wetlands impacts (from 250 sf to 1,759 sf) compared with the ENF alternative. The DEIR indicates that additional wetlands impacts are due to entrance roadway width requirements imposed by the Town of Sutton.

The DEIR also discusses wastewater alternatives and eliminates the on-site wastewater treatment facility alternative due to poor soil conditions, potential size, and economic infeasibility. Sustainable design alternatives described in the DEIR include clustering development on 48 acres of the 149-acre site, permanent protection of 101 acres, use of Low Impact Development (LID) alternatives and ecologically preferable landscaping approaches.

The DEIR includes an analysis of alternatives to avoid and minimize public shade tree removal associated with improvements proposed for DeWitt Road. The DEIR concludes that the alternatives are infeasible because of land acquisition and re-grading issues, and potential impacts of access changes to local residences. The proponent has committed to work with the

Town of Sutton to provide replacement public shade trees along DeWitt Road in an expanded landscaped area at the intersection of West Sutton Road.

Rare Species

The proposed project will occur within habitat of the Eastern Box Turtle (*Terrapene Carolina*, Special Concern), Marbled Salamander (*Ambystoma opacum*, Threatened), and Four-toed Salamander (*Hemidactylium scutatum*, Special Concern), which are protected in accordance with the Massachusetts Endangered Species Act (MESA). The proponent has conducted a preliminary habitat assessment for the three species as requested by NHESP, and has been in consultations with NHESP regarding assessment results and project revisions. As described in the DEIR, the project has been modified to reduce disturbance in state-listed species habitat. As indicated by NHESP in its comment letter, it appears that a "take" will be avoided for the Four-toed and Marbled Salamanders. However, the project will result in a "take" of the Eastern Box Turtle. The DEIR describes mitigation proposed by the proponent, which includes permanent protection of on-site state-listed species habitat, wildlife crossing structures, construction conditions such as timing restrictions, and habitat management. NHESP anticipates being able to issue a Conservation and Management Permit, and will make a final determination regarding the "take", and whether all permitting standards are met, once a formal MESA filing and Conservation and Management Permit Application have been submitted. Additional information on the proposed forest cutting plan must be provided in a MESA filing and in the FEIR as further detailed in the Scope below. As noted by NHESP in its comment letter, no alteration to the soil, surface, or vegetation and no work associated with the proposed project shall occur on the property until the NHESP has made a final determination.

Wetlands and Stormwater Management

The DEIR describes wetland resources on the project site and proposed work that will impact BVW and buffer zone. The DEIR also discusses how the proposed stormwater management system will comply with the MassDEP Stormwater Management Policy standards and includes a detailed Drainage Report. According to the DEIR, the proposed drainage system will be designed to maintain the characteristics of the existing watershed areas. Post-development runoff rates and volumes will be maintained at or below existing levels and the system will be designed to minimize pollutant and thermal impacts on fishery resources associated with Singletary Pond. According to the DEIR, post-construction operation and maintenance of the stormwater management system will be funded through the Homeowner's Association, which will be established for the project.

The proponent has committed to erosion and sedimentation controls, a Construction Management Plan, a Stormwater Pollution Prevention Plan, and a range of stormwater management Best Management Practices (BMPs) to protect wetlands resources on-site and in the vicinity of the project. The DEIR indicates that all in-stream work will be conducted during low flow periods as recommended by NHESP and confirmed that the project does not involve any culvert replacement.

As described in the DEIR, the project has been revised to accommodate an access roadway design requirement of the Town of Sutton, which will result in alteration of 1,759 sf of

BVW, compared with 250 sf as proposed in the ENF. The proponent has committed to replicate wetlands at a 1:1 ratio. The project is subject to the Massachusetts Endangered Species Act (MESA) review. As further detailed in the MassDEP comment letter, a determination by NHESP that a project may proceed pursuant to a Conservation and Management Permit shall be presumed to satisfy standards for no short or long-term adverse effect pursuant to the wetlands regulations. The Order of Conditions for the project (to be issued by Sutton Conservation Commission or MassDEP under an appeal) shall incorporate conditions that are consistent with the NHESP conditions or determinations.

Wastewater

The DEIR includes an update on wastewater infrastructure plans and wastewater generation estimates. Wastewater from the proposed project will be discharged through Town of Sutton sewers to the Town of Millbury sewer system, and ultimately to the Upper Blackstone Wastewater Treatment Facility. An on-site wastewater treatment system is no longer being considered for the project. As noted by MassDEP in its comment letter, the sewer alternative is appropriate given the proximity of proposed residences to Singletary Pond and Ramshorn Pond. MassDEP has indicated that a sewer extension can not be approved until the Towns of Sutton and Millbury renegotiate their current Inter Municipal Agreement. According to the DEIR, the towns are negotiating the terms of an updated Inter Municipal Agreement and anticipate that an agreement will be reached by the end of 2007.

The DEIR proposes installation of 500 linear feet (lf) of new 12-inch gravity sewer main along DeWitt road and 2,500 lf within West Sutton Road. The proposed sewer mains will enable residents along DeWitt Road and West Sutton Road to connect to the municipal system, and will reduce adverse impacts to Singletary Lake associated with failing "tight tanks" on existing residential properties.

SCOPE

General

The proponent should prepare a Final EIR (FEIR) in accordance with the general guidance for outline and content found in Section 11.07 of the MEPA regulations as modified by this Scope. The FEIR should include a copy of this Certificate and a copy of each comment letter received on the DEIR. The FEIR should include clearly labeled maps and plans of a reasonable scale to facilitate review and comment. The FEIR should include a project summary with a project description, an update on any changes since the filing of the DEIR, and a summary of alternatives analyzed and mitigation measures proposed.

Rare Species

As further detailed in the NHESP comment letter, the current owner of the project site may have plans to harvest trees on-site. The FEIR should describe any proposed forest cutting and related impacts, including potential impacts to habitat of state-listed species. Proposed forest

cutting is an important consideration during the MEPA process as it is relevant to the analysis of baseline conditions, cumulative impacts, and mitigation planning. As further detailed in the NHESP letter, impacts related to tree harvesting and the proposed residential development are considered cumulative rather than separable in accordance with the MESA regulations, which do not allow project segmentation. I advise the proponent to consult with NHESP prior to filing the FEIR to discuss the forest-cutting plan and related information to be included in the MESA filing and FEIR.

Wetland Resources

Since the filing of the ENF, roadway design has been changed resulting in increased wetlands alteration (from 250 sf to 1,759 sf). The FEIR should describe how the project will meet the requirements for a 401 Water Quality Certification application or optional recorded deed restrictions. The FEIR should explain the rationale for the entrance road design changes, and explain why the reduced width roadway proposed in the ENF is not considered a feasible alternative to minimize wetlands alteration. MassDEP has indicated in its comment letter that the proponent should locate and identify vernal pools and have them certified by NHESP. The DEIR identifies four potentially certifiable vernal pools on-site. The FEIR should provide an update on consultations with NHESP regarding vernal pools and the status of their certification.

Agricultural Soils

The Department of Agricultural Resources (DAR) requested that the proponent establish a community garden as mitigation for prime farmland soils impacts. The proponent has committed to establish a community garden if there is demand from residents. I encourage the proponent to consider potential local community interest also and consult with the Town of Sutton Conservation Commission and DAR on this issue. The FEIR site plans should identify the area on-site and acreage proposed for a community garden.

Wastewater

According to the ENF, wastewater from the proposed development will be conveyed to the Upper Blackstone Water Pollution Abatement District facility through the Town of Millbury sewer system and the proposed new sewer main. The project cannot receive a sewer extension permit from MassDEP unless an updated Intermunicipal Agreement (IMA) has been signed between the towns of Sutton and Millbury. The FEIR should provide an update on the status of IMA.

Sustainable Design

The DEIR notes that the proponent will evaluate opportunities to incorporate sustainable design measures into the project as the project proceeds. I encourage the proponent to consider EnergyStar Certification and Leadership in Energy and Environmental Design (LEED) Certification for Homes. The FEIR should provide an update on sustainable design aspects of the project.

Mitigation and Section 61 Findings

The FEIR should include a revised Section 61 Findings for the Conservation and Management Permit as applicable to reflect any changes in proposed mitigation since the filing of the DEIR. The FEIR should also include proposed Section 61 Findings for a 401 Water Quality Certification if required by MassDEP.

Comments

The FEIR should respond to the comments received to the extent that they are within MEPA jurisdiction. The proponent should use either an indexed response to comment format, or direct narrative response. The FEIR should present any additional narrative or quantitative analysis necessary to respond to the comments received.

Circulation

The FEIR should be circulated to all who submitted commented on the DEIR as listed below, to the Towns of Sutton and Millbury, to any agency from which the proponent may require a permit or approval, and to others as required by Section 11.16 of the MEPA regulations. A copy of the FEIR should also be made available for public review at the Sutton Public Library.

September 14, 2007

DATE



Ian A. Bowles, Secretary

Comments Received

- 8/29/07 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
- 9/05/07 Department of Environmental Protection, Central Regional Office

IAB/AE/ae