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September 22, 2003

DRAFT RECORD OF DECISION

PROJECT NAME : Fruit Street Master Plan
PROJECT MUNICIPALITY : Hopkinton
PROJECT WATERSHED : SuAsCo
EOEA NUMBER : 13092
PROJECT PROPONENT : Town of Hopkinton
DATE NOTICED IN MONITOR : August 9, 2003

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 have reviewed the project and **propose to grant a partial Phase I Waiver** to allow a portion of Phase I of the project as defined below to proceed to the state permitting agencies prior to completion of the Single Environmental Impact Report (EIR). I am also proposing to deny a portion of the Phase I Waiver request. By separate certificates issued today, I have released the scope for a Master Plan EIR and established a Special Review Procedure to guide the MEPA review.

Project Description

As described in the Environmental Notification Form (ENF), the proposed project involves phased development of a 257-acre site off Fruit Street recently purchased by the Town of Hopkinton and previously proposed for a golf course (EOEA #12542). The Town intends to develop the site into recreational fields (approximately 27 acres), water supply (approximately 33 acres), elementary school (approximately 20 acres), housing (approximately 13 acres), a DPW depot (approximately 9 acres), and open space (approximately 116 acres), and associated roadways (approximately 4 acres). The Town is reserving a portion of the

site (approximately 31 acres) for currently unspecified future municipal uses. The temporal sequence of the phasing is still in planning, although the town has identified which portions of the site are proposed for the various uses.

Applicable MEPA Thresholds

The project is undergoing MEPA review and requires the preparation of an EIR pursuant to Sections 11.03 (1)(a)1. and 11.03 (4)(a)1.b. of the MEPA regulations, because the project involves direct alteration of more than 50 acres of land and a new groundwater withdrawal of more than 1,500,000 gallons per day. The project also meets ENF filing thresholds related to land (creation of impervious area), rare species, wastewater disposal, traffic, and parking.

Permits and Jurisdiction

The project will require a Water Management Act Permit, New Source Approval, Groundwater Discharge Permit, and (on appeal only) a Superseding Order of Conditions, all from the Department of Environmental Protection (DEP). The project will also require a Conservation Permit from the Division of Fisheries and Wildlife. The proponent is seeking financial assistance from the Commonwealth for the project. (Recognizing the importance of additional active and passive recreational opportunities in Hopkinton, I have identified the Fruit Street parcel as a high priority project for funding through the Executive Office of Environmental Affairs Self Help Grants Program.) MEPA jurisdiction therefore extends to all aspects of the project that may cause significant Damage to the Environment as defined in the MEPA statute¹.

Waiver Request

In accordance with Section 11.11 of the MEPA regulations, the proponent has asked for a waiver to allow Phase I of the project to advance to final design and permitting pending completion of the EIR for the project as a whole. The waiver request was discussed at the consultation/scoping session that was held on August 26, 2003. The Phase I waiver request consists of two separate elements: 1) placement of a Conservation Restriction on

¹ In the event that the proponent did not seek financial assistance from the Commonwealth for the project, MEPA jurisdiction would extend to the subject matter of required or potentially required state permits or Agency Actions. Given the broad subject matter of the permits required, most of the potential impacts would fall within MEPA jurisdiction anyway (the only significant exception being traffic impacts).

approximately 116 acres of the site, and 2) development of recreational fields on 27 acres of the site and development of associated infrastructure to serve the fields.

Criteria for a Phase I Waiver

Section 11.11 of the MEPA Regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: a) result in an undue hardship for the proponent, unless based on delay in compliance by the proponent; and b) not serve to avoid or minimize Damage to the Environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to phase one of the project prior to preparing an EIR, this finding shall be based on the following circumstances: 1) the potential environmental impacts of phase one, taken alone, are insignificant; 2) ample and unconstrained infrastructure facilities and services exist to support phase one; 3) the Project is severable, such that phase one does not require the implementation of any other future phase of the Project or restrict the means by which potential environmental impacts from any other phase of the Project may be avoided, minimized or mitigated; and 4) the Agency Action on phase one will contain terms such as a condition or restriction in a Permit, contract or other relevant document approving or allowing the Agency Action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to Commencement of any other phase of the Project.

Findings

Based upon the record before me, including the information submitted by the proponent and comments received, and after consultation with the relevant state agencies, I find that:

- 1) The placement of a Conservation Restriction (CR) on 116 acres of the site meets the regulatory tests for waivers. The placement of a CR will ensure protection of a large, contiguous parcel of open space that contains extensive wetlands, rare species habitat, and forested uplands. The placement of a CR on this portion of the parcel is clearly consistent with the intent of MEPA to avoid Damage to the Environment. The impacts of placing a CR on a portion of

the site are insignificant within the meaning of Section 11.11 of the MEPA regulations. Placement of a CR is severable in that such an action does not assume or depend upon completion of future phases. Although placement of a CR on a portion of the site necessarily restricts the layout of later phases, the CR is being placed on some of the most ecologically sensitive portions of the site, which would have significant development constraints anyway because of the valuable resources present. I find that delaying the placement of a CR would serve only to delay the environmental benefits associated with permanent protection of the parcel. I hereby propose to allow the placement of the CR prior to completion of the EIR for the project as a whole.

- 2) The development of the recreational fields and associated infrastructure, on the other hand, does not meet the regulatory tests for waivers, at least at this time. DEP and the Hopkinton town government itself, through its Conservation Commission, have raised concerns that the development of the recreational fields may limit or preclude options under consideration for wastewater disposal and/or other project elements. The Division of Fisheries and Wildlife (DFW) has raised concern with potential impacts of the recreational fields on rare turtles and amphibians. Given the concerns of the agencies, it would be premature to find that the potential impacts of Phase I are insignificant or that Phase I is severable from the rest of the project (see Sections 11.11 (4) (a) and (4) (c) of the MEPA regulations. I am therefore proposing to deny the portion of the Phase I waiver request related to the recreational fields at this time.
- 3) I consider the action relative to the recreational fields to be a denial without prejudice, based on the lack of information rather than an inherent flaw with the concept of developing the recreational fields as an early action item. (I note the comments from the Town agencies regarding the need for additional recreational facilities in the Town, and my decision to prioritize Hopkinton's request for self help funding.) If the proponent develops the additional information requested by DEP, DFW, and the Conservation Commission, I will reconsider the waiver request for the recreational fields upon submission and review of the additional information by the proponent.

Based on these findings, it is my judgment that the waiver request with respect to the execution of a CR has merit and meets the tests established in Section 11.11 of the MEPA regulations, while the waiver request for development of the recreational fields does not meet the regulatory standards based on the currently available information. I will publish this Draft Record of Decision in the October 7, 2003 issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall confirm, modify, or rescind the proposed decision.

September 22, 2003

Date

Ellen Roy Herzfelder

Comments received on the ENF:

08/26/03 Department of Environmental Protection CERO
08/26/03 Hopkinton Conservation Commission
08/27/03 Massachusetts Historical Commission
08/28/03 Riverways Programs
09/05/03 Hopkinton Board of Selectmen
09/08/03 Hopkinton Board of Health
09/08/03 Mary Pratt
09/08/03 Hopkinton Parks and Recreation Department
09/08/03 Hopkinton School Committee
09/08/03 Hopkinton DPW Advisory Committee
09/08/03 Hopkinton Conservation Commission
09/09/03 MA Department of Conservation and Recreation
09/11/03 Division of Fisheries and Wildlife

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