

January 15, 2004

**DRAFT RECORD OF DECISION
PHASE I WAIVER**

PROJECT NAME : Vertente Boulevard Extension and Castaldi Drive Project
PROJECT MUNICIPALITY : Dartmouth
PROJECT WATERSHED : Buzzards Bay
EOEA NUMBER : 13140
PROJECT PROPONENT : Town of Dartmouth
DATE NOTICED IN MONITOR : November 26, 2003

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I hereby propose to **propose to grant a waiver** (as defined below) to allow the first phase of the project to proceed, pending the preparation of an Environmental Impact Report (EIR) for the project. In a certificate also issued today I have issued a scope for the EIR.

Project Description

The New Bedford Business Park is comprised of 1,300 acres of land located in the City of New Bedford and the Town of Dartmouth. The Greater New Bedford Industrial Foundation (GNBIF), the non-profit developer and manager of the Park, has the charge of promoting industrial development and expansion of the New Bedford Business Park.

Currently, approximately 400 acres of industrial-zoned land in the Park have been developed consisting of 33 industrial plants and 2,354,000 square feet (sf) of occupied industrial space. According to the information contained in the Expanded Environmental Notification Form (EENF), and additional information provided by the proponent during the MEPA scoping session for the proposed project, 700 acres of land within the Business Park are comprised of wetlands and have been determined to be undevelopable.

As described in the (EENF), the Town of Dartmouth is proposing to construct the new Castaldi Drive and extend the existing John Vertente Boulevard within the Town of Dartmouth portion of the New Bedford Business Park. Although not fully described in the EENF, the proposed project also involves the eventual development of approximately 62 acres of undeveloped industrial-zoned land made accessible by the proposed roadway construction. According to the proponent, the roadway construction portion of the project will serve to provide needed access to seven industrial zoned development parcels, and facilitate the development of seven building lots and estimated 327,000 sf of new industrial space. The project's water supply needs (approximately 11,000 gallons per day (gpd)), and wastewater treatment needs (approximately 11,000 gpd) will be serviced by the City of New Bedford's Quittacas Water Treatment Facility and the Water Pollution Control Facility, respectively.

The project is undergoing review and requires preparation of an EIR pursuant to Section 11.03 (1)(a)(2) of the MEPA regulations, because the project requires state permits and will involve the creation of more than 10 acres of new impervious surfaces (approximately 19.8 acres total). The project is also undergoing review pursuant to Section 11.03 (6)(b)(14) of the MEPA regulations because the project results in the generation of 1,000 or more new adt (2,540 adt total) on roadways providing access to a single location, and construction of 150 or more new parking spaces (450 total) at a single location, respectively. The project is also undergoing review pursuant to Section 11.03 (6)(b)(1)(a) of the MEPA regulations, because the project involves the construction of a new roadway greater than ¼ mile in length. The proposed project will not require an Access Permit from the Massachusetts Highway Department (MHD). However, it is unclear at this time whether the project will require an approval from MHD for work within the state highway layout.

Using the Institute of Traffic Engineers Trip Generation land use code 130 for Industrial Park, the proposed project is estimated to generate approximately 2,450 vehicle trips on the average weekday. If the project requires MHD approval, an air quality mesoscale analysis for ozone will be needed for this project to assess the total volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions associated with all project-related vehicle trips. The project will require a sewer extension permit from the Department of Environmental Protection (DEP). The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over five acres from the U.S. Environmental Protection Agency.

The project has received an Order of Conditions from the Dartmouth Conservation Commission for the proposed roadway construction work. I note that the future development of the industrial land abutting the proposed roadway construction may involve further wetlands permitting.

Because the proponent is seeking state funding for the project, MEPA jurisdiction extends to all aspects of the project that may cause significant Damage to the Environment.

Phase I Waiver Request

The proponent originally requested a Phase I Waiver to construct approximately 1,100 linear feet of new cul-de-sac roadway (Castaldi Drive), and the subsequent development of 3 industrial zoned building lots identified as Lot #1, Lot #2 and Whelen Lot #2 (approximately 175,000 sf total) located off Samuel Barnett Boulevard in Dartmouth. The Phase I Waiver would allow construction of those elements to proceed in advance of the preparation of an (EIR) for the full build-out of the site.

As described in their comment letter, the Natural Heritage and Endangered Species Program (NHESP) has documented the existence of indicate the existence of Eastern Box Turtles within the project site in the vicinity of the proposed extension of John Vertente Boulevard, and the new construction of Castaldi Drive.

In response to NHESP's comments, the proponent revised its Phase I Waiver Request to eliminate the proposed development of Lot #2 from the Castaldi Drive portion of the project. As described in the proponent's revised Phase I Waiver request, work to be performed in Phase I now includes: the construction of approximately 1,100 linear feet of new cul-de-sac roadway (Castaldi Drive); the construction of two industrial zoned building sites identified by the proponent as Lot #1 and Whelen Lot #2 (approximately 110,000 sf total), 95 surface parking spaces, municipal water and sewer connections, attendant stormwater management best management practices (BMPs), and a comprehensive erosion and sedimentation control program. Phase I work will not impact any wetland resource areas located within the project site.

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 will allow the proponent to proceed with Phase I of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

1. the potential impacts of phase one of the project, taken alone, are insignificant;
2. ample and unconstrained infrastructure facilities and services exist to support phase one of the project;
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

I have carefully reviewed the EENF and supporting documentation, written comments and comments received at the scoping session.

1. According to comments received from the State's Natural Heritage & Endangered Species Program (NHESP), the project site contains priority habitat for the Eastern Box Turtle (*Terrepepe Carolina*). The proposed project, including the Phase I portion of the project, would have disrupted the feeding, breeding, nesting, overwintering, and migratory behavior of Eastern Box Turtles, and would result in a probable take of state protected wildlife.

In response to NHESP's initial comment letter (12/22/03), the proponent revised its Phase I Waiver Request to eliminate the proposed development of Lot #2 from the Castaldi Drive portion of the project. Subsequently, NHESP submitted a revised January 8, 2004 comment letter expressing support for the proponent's revised Phase I Waiver Request. The proponent has committed to apply for a Conservation Permit pursuant to the Massachusetts Endangered Species Act (MESA) and MESA Regulations (321 CMR 10.04(3)(b)) to address the impacts to endangered species from the proposed Vertente Boulevard/Castaldi Drive project, as well as the potential impacts anticipated from the future development and expansion of the New Bedford Business Park.

The proposed roadway construction and attendant industrial development have been sited within the project site to avoid alteration to any wetlands resource areas. According to the proponent, the project has been designed to meet DEP's Stormwater Management Policy standards and practices and will include a 100-year storm stormwater detention basin, oil/water separators, and water quality swales.

The EENF/Phase I Waiver request contains sufficient information upon which to make a determination that the potential impacts of Phase I to protected rare and endangered species, taken alone, are insignificant.

2. In its comments, the Massachusetts Historical Commission (MHC) indicated that the Castaldi Drive roadway project area, including the industrial development land abutting the proposed roadway (34 acres total), has high archeological sensitivity and is likely to contain archeologically significant sites associated with Native American occupation of the Dartmouth area. MHC has requested the proponent to conduct an intensive (locational) archaeological survey for those areas potentially impacted by the proposed project and report generally on its results in the EIR.

In response to MHC's comments, the proponent entered into a Memorandum of Agreement with MHC (January 15, 2004) and has agreed to undertake an intensive (locational) archaeological survey of the Castaldi Drive project area (roadway and 3 development lots), in consultation with MHC, in a manner that is consistent with the Massachusetts State Archaeologist's permit regulations (950 CMR 70), and under a permit issued by the State Archaeologist. According to MHC's revised comments, MHC has no objection to the revised Phase I Waiver Request being granted for the Castaldi Drive project area provided that no construction or earthmoving activities take place within the project area (roadway and 3 development lots) prior to the fulfillment of the terms of the MOA.

The EENF/Phase I Waiver request contains sufficient information upon which to make a determination that the potential impacts of Phase I to historical and archaeological sensitive areas, taken alone and provided that the terms of the MOA are fulfilled, are insignificant.

3. According to the comments received from MHD, the proponent should expand the Traffic Impact Assessment contained in the EENF to analyze the proposed project's traffic impacts to the following additional intersections:
 - Route 140 southbound ramps/Braley Road intersection;
 - Route 140 northbound ramps/Braley Road intersection;
 - Braley Road/Route 18 intersection

MHD has requested, as a condition for my granting the proponent's Phase I Waiver request for the revised Phase I Castaldi Drive portion of the proposed project, that the proponent commit to installing the proposed traffic signalization at the Theodore Rice Boulevard/Braley Road/Phillips Road intersection, if warranted and required by MHD, prior to any site occupancy associated with the proponent's future Phase II development of industrial land abutting the construction for Castaldi Drive (Lot #2) and extension of Vertente Boulevard (Lots #3, #4, #5 and #6). I adopt MHD's request as a condition of my granting the proponent's Phase I Waiver request.

Based on these findings, it is my judgment that the phase one waiver request meets the tests established in 301 CMR 11.11, and will serve to advance the interests of the

Massachusetts Environmental Policy Act. Therefore, I propose to **grant a waiver** for Phase I subject to the aforementioned findings and conditions.

This Draft Record of Decision (DROD) shall be published in the January 24, 2004 issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

January 15, 2004

Date

Ellen Roy Herzfelder, Secretary

Comments received:

12/08/03	Town of Dartmouth
12/10/03	Southeastern Regional Planning & Economic Development District (SRPEDD)
12/16/03	Massachusetts Historical Commission (MHC)
12/16/03	Department of Environmental Protection – SERO
12/22/03	Natural Heritage and Endangered Species Program (NHESP)
12/23/03	Epsilon Associates Inc.
12/23/03	Goodwin Procter LLP
12/29/03	Rackemann, Sawyer & Brewster
12/29/03	Massachusetts Highway Department (MHD)
01/07/04	Rackemann, Sawyer & Brewster
01/08/04	Natural Heritage and Endangered Species Program (NHESP)
01/08/04	Epsilon Associates Inc.
01/12/04	Epsilon Associates Inc.
01/13/04	Epsilon Associates Inc.
01/15/03	Rackemann, Sawyer & Brewster
01/15/04	Massachusetts Historical Commission (MHC)

DROD #13140

ERH/NCZ/ncz