



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>

February 5, 2010

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

PROJECT NAME : Reed Pond Properties 6-lot Residential Subdivision
PROJECT MUNICIPALITY : Nantucket
PROJECT WATERSHED : Nantucket Island
EEA NUMBER : 14529
PROJECT PROPONENT : The Estate of Alice J. Dejonge, et al.
DATE NOTICED IN MONITOR : January 6, 2010

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G. L. c. 30, ss. 61-62I) 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 described in the Environmental Notification Form (ENF), the project consists of the development of a six-lot residential subdivision, a roadway (Chase Links Circle) ending in a cul-de-sac, and a stormwater management system on a 44.7-acre site located off Cliff Road on Nantucket. The project site currently consists of one single family home. The total development layout, including the subdivision roadway and development footprints on the individual lots, comprises approximately 8.0 acres (18%) of the site. Of the remaining 36.7 acres of land, approximately 30.6 acres are proposed to be protected under a Conservation Restriction (CR) and/or separate Declarations of Restriction on individual lots. Each new lot will be serviced by municipal water and individual septic systems. The project site contains mapped habitat for rare or endangered species according to the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP).

Anticipated environmental impacts associated with the project include 8.0 acres of land alteration, 1.2 acres of new impervious area, approximately 0.15 miles of new water main, an estimated 4,200 gallons per day (GPD) of water supply demand and 4,740 GPD of wastewater generation, alteration of Coastal Bank and Coastal Beach and a "take" of the Northern Harrier, Nantucket Shadblow, and Bushy Rockrose as defined by the Massachusetts Endangered Species Act (MESA, M.G.L.c.131A). The Proponent has been coordinating with NHESP to mitigate the

impacts to rare species habitat on the project site. The project is also located on Nantucket Island, a National Historic Landmark, which is listed on the State and National Registers of Historic Places.

Jurisdiction and Permitting

The project is undergoing review pursuant to Sections 11.03(2)(b)(2) and 11.03(3)(b)(1)(a) of the MEPA regulations because it requires a State Agency Action and it will result in the alteration of Coastal Bank and the disturbance of greater than two acres of designated priority habitat that results in a “take” of a State-listed species. The project must obtain a Conservation and Management Permit in accordance with MESA from NHESP. The project will also require an Order of Conditions the Nantucket Conservation Commission (and, on appeal only, a Superseding Order of Conditions (SOC) from the Massachusetts Department of Environmental Protection (MassDEP). Finally, the project may require a National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) from the United States Environmental Protection Agency (U.S. EPA) for construction activities which disturb one acre or more of land.

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 Damage to the Environment as defined in the MEPA regulations and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction extends to rare species, wetlands and stormwater.

Review of the ENF

The project site is mapped as *Priority Habitat* for the Northern Harrier, a “Threatened” species, and the Nantucket Shadbush and Bushy Rockrose, both species of “Special Concern” pursuant to MESA and its implementing regulations at 321 CMR 10.00. On November 10, 2009, NHESP issued a letter stating that the project, as currently proposed, will result in a “take” of the three rare species and will require a Conservation and Management Permit (CMP). Comments received from NHESP indicate that several issues must be addressed before NHESP can issue a MESA CMP:

- The Proponent currently proposes to protect 17.9 acres through a formal CR, to be approved by the Massachusetts Executive Office of Environmental Affairs (EEA), and an additional 12.7 acres through deed restrictions. In order to ensure that the proposed open space will be adequately protected and monitored so as to continue to provide a long-term net benefit to the affected state-listed species, NHESP requests that an EEA-approved CR be placed over all of the proposed open space. In the event that the Proponent is unable to identify a qualified land trust or government entity (e.g. conservation commission) willing to serve as the CR grantee, NHESP will consider the mixed CR-deed restriction approach proposed by the Proponent.
- To maintain conditions suitable for the Northern Harrier, the habitat management plan should be modified to include some level of early successional habitat management throughout the open space, rather than an exclusive focus on the rare plant areas currently identified for active long-term management.

- According to the ENF, the Proponent acknowledges the need to establish a fund to implement long-term management. The details of the legal and financial mechanisms, as well as the extent of required funding, need to be further developed and agreed to by NHESP.
- The proposed off-site mitigation should be increased and should include provisions to benefit affected state-listed plants, as well as the Northern Harrier.

The Proponent should also continue working with NHESP to ensure that the conditions of the CR achieve the goal of on-site habitat preservation.

Construction management plans will also be required to ensure protection of both individual species and their habitat during the construction period. It is anticipated that construction period protocols will be prepared in a manner consistent with the terms of the CMP and the CR. In addition, the project will require the preparation of a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the NPDES CGP to outline BMPs to control erosion and sedimentation during the construction period.

The project will create approximately 1.2 acres of impervious area. The project will manage stormwater through the use of Best Management Practices (BMPs) such as deep sump hooded catch basins connected to oil and water separators and subsurface infiltration systems. The stormwater management system proposes to collect, treat and infiltrate all stormwater on-site. Additionally, in an effort to further reduce land alteration and impervious area impacts, I encourage the Proponent to pursue design opportunities such as Low Impact Development (LID) stormwater techniques, to limit project impact.

According to the ENF, portions of the proposed subdivision roadway will be located within the Buffer Zone to Bordering Vegetated Wetlands and work activities on Lots 4A and 5A and will also require Orders of Conditions from the Nantucket Conservation Commission under the Wetlands Protection Act (WPA). In addition, the proposed beach access stairways on Lots 4A and 5A will require approval under the WPA for alteration of 80 linear feet of Coastal Bank and 5 square feet of Coastal Beach. According to MassDEP, the beach access stairways should be designed as elevated structures to minimize impacts to the vegetative cover.

As noted above, the entire project area is located within Nantucket Island, a National Historic Landmark, which is listed in the State Register of Historic Places. I have received comments from the Massachusetts Historical Commission (MHC) indicating that the undisturbed portions of the project area are archeologically sensitive because of its environmental setting, which includes well-drained soils located in close proximity to wetlands and water resources favorable for ancient and historic period land use and occupation. MHC's comments do not indicate whether the proposed project has been determined to have an adverse effect on the National Historic Landmark as required by M.G.L. c. 9, Section 27C. Instead, MHC requests that the Proponent conduct an intensive (locational) archaeological survey (950 CMR 70) for the proposed project impact area. Comments from MHC further indicate that the survey would require a State Archeologist's Permit pursuant to 950 CMR 70 to ensure the investigation meets professional standards.

Because the only Permit required for this project is the Conservation and Management Permit (and potentially an SOC from MassDEP), MHC's request for an archeological survey is beyond the scope of my jurisdiction under MEPA, and I am therefore declining to require such a survey as a requirement of the MEPA process. However, this limitation in the scope of MEPA authority does not restrict the authority of MHC to require such surveys under its own consultation process.

Although the project is not subject to the MEPA GHG Emissions Policy and Protocol because I have found that it does not require the preparation of an EIR, I strongly encourage the Proponent to voluntarily undertake measures to reduce GHG emissions associated with the project. New construction such as that proposed by this project presents an ideal opportunity for incorporation of sustainable design and green building elements. Adoption of energy efficiency measures in particular can, over the course of the project life, both reduce greenhouse gas emissions and prevent Damage to the Environment as well as reduce operating costs to each of the households. Also, homes such as the ones proposed for this project are often suitable for the installation of roof-top solar photovoltaic (PV) systems, which can serve to offset the homeowner's energy usage by generating clean renewable power on site. I therefore strongly encourage the Proponent to adopt all feasible energy efficiency and sustainable design measures in designing and constructing this project.

I likewise encourage the Proponent to mitigate the construction period impacts of diesel emissions to the maximum extent feasible. This mitigation may be achieved through participation in the MassDEP Diesel Retrofit Program. The Proponent should work with MassDEP staff to implement construction-period diesel emission mitigation, which could include the installation of after-engine emission controls such as diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs). Additionally, I strongly encourage that construction equipment operate on ultra low sulfur diesel (ULSD) fuel, which will be required for off-road engines in 2010.

Conclusion

Based on the information in the ENF and after consultation with relevant public agencies, I find that no further MEPA review is required at this time. The project may proceed to state permitting.

February 5, 2010

Date

Alicia McDevitt, Assistant Secretary, for
Ian A. Bowles

Comments received:

01/08/2010 Massachusetts Division of Marine Fisheries
01/12/2010 Massachusetts Historical Commission
01/26/2010 Massachusetts Department of Environmental Protection – SERO
01/26/2010 Natural Heritage and Endangered Species Program

IAB/PPP/ppp