



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>

January 22, 2009

FINAL RECORD OF DECISION

PROJECT NAME : Forestdale Village Local Initiative Program
PROJECT MUNICIPALITY : Sandwich
PROJECT WATERSHED : Cape Cod
EEA NUMBER : 14512
PROJECT PROPONENT : Forestdale Village, LLC
DATE NOTICED IN MONITOR : November 23, 2009

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (Expanded ENF) and hereby **grant a waiver** that will allow the proponent to proceed with design and permitting of Phase 1 of the project prior to completing the Environmental Impact Report (EIR) process for the entire project. A Draft Record of Decision (DROD) proposing to grant the waiver was published for public comment on January 6, 2010.

Project Description

As described in the Expanded ENF, the project consists of a mixed-use development. The project site is located on Route 130 (Forestdale Road) and contains approximately 75.81 acres of vacant land. The residential component of the proposed project involves the construction of 148 housing units (age-restricted, 55 and over) under Chapter 40B on the eastern portion of the site, approximately 9,880 square feet of apartment space (seven units), and approximately 56,300 square feet of assisted living space in the northwest quadrant of the site. The commercial portion of the project involves the construction of approximately 60,160 square feet of restaurant, retail, and office space on the western portion of the site. Access to the site would be provided by two driveways on Route 130. In addition, the Proponent is seeking a connection to the adjacent

Mobil Fuel and Convenience Station located immediately north of the project site along Route 130.

The project will be constructed in two phases. Phase I of the Forestdale Village project includes 60,160 square feet of commercial space; 9,880 square feet of residential apartment space in seven apartment rental units; a 400 square foot wastewater treatment plant building; a 56,300 square foot assisted living building with 120 assisted living units; and 17 detached single family homes. Phase II of the Forestdale Village project will include the balance of the detached single family homes (131 units).

Anticipated environmental impacts associated with the entire project include 41.5 acres of land alteration, 13 acres of new impervious area, 2,010 new vehicle trips per day, 709 new parking spaces, and approximately 50,000 gallons per day (gpd) of new water usage and wastewater generation. The project will occur within the habitat of the Eastern Box Turtle (*Terrapene carolina*), which is state-listed and protected as a species of "Special Concern". The proposed project abuts Peter's Pond. In Phase II, two residential homes will abut conservation land with frontage on Peter's Pond. However, no construction is proposed within the 100-foot buffer area of the pond. There are no other wetlands resources on the site. As a result, there are no wetlands resource impacts associated with the Full Build of the project.

MEPA Jurisdiction and Required Permits

This project is subject to MEPA review and the preparation of a mandatory EIR because it requires a State Agency Action and will create ten or more acres of impervious area (301 CMR 11.03(1)(a)(2)). The project will require a Groundwater Discharge Permit and a Sewer Connection/Extension Permit from the Massachusetts Department of Environmental Protection (MassDEP). The project will also require a Conservation and Management Permit from the Natural Heritage and Endangered Species Program (NHESP) of the Division of Fisheries and Wildlife. A National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the U.S. Environmental Protection Agency will be required. The project is subject to the EEA/MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol. Phase II of the project may include frontage within 100 feet on Peters Pond, which is regulated under the Wetlands Protection Act. While the placement of the residential structure is not known at this time, the proponent anticipates filing a Request for Determination of Applicability (RDA) with the Town of Sandwich Conservation Commission.

The residential portion of the development is being permitted through the Local Initiative Program (LIP), administered by the Massachusetts Department of Housing and Community Development (DHCD). The project is seeking financial assistance from the DHCD in accordance with M.G.L. Chapter 40B, Sections 20-23. Therefore, MEPA jurisdiction for this project is broad and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment as defined in the MEPA regulations.

Forestdale Village will be required to obtain approval as a Development of Regional Impact (DRI) from the Cape Cod Commission. Accordingly, the Cape Cod Commission will conduct a detailed consistency review of the project relative to its Regional Policy Plan.

Summary of Potential Environmental Impacts for Phase 1

As indicated in the Expanded ENF, the proponent is seeking a Phase 1 Waiver for Phase 1 of the project. Phase 1 of the project does not exceed EIR thresholds. Phase 1 will result in 14.5 acres of direct alteration. Phase 1 will include 9.5 acres of impervious area, including parking lots. Phase I of the proposed project also includes the construction of a new 2,000 linear foot water main. Water for public domestic use as well as fire suppression will be supplied by the Sandwich Water District via a 12-inch loop the applicant will be installing from West Road through the project to Route 130. The resulting water supply loop will improve water quality and fire suppression capacity within the Forestdale neighborhood, as well as supply water to the Forestdale Village project. While no wastewater thresholds are exceeded by Phase 1 of the project, the proponent is seeking a Groundwater Discharge Permit from MassDEP to build the wastewater treatment facility for the Full Build of the project as part of Phase 1 of the project.

Phase 1 of the proposed project will generate 1,427 vehicles per day which was described in the Traffic Impact and Access Study. Phase 1 will also include the construction of 389 parking spaces to support the commercial component of the project. The proponent also proposes to construct 1,950 linear feet of new roadway to support the commercial component of the project during the first Phase of the project.

Mobile source emissions were also modeled for Phase 1 using data gathered as part of the mesoscale study. The emissions of CO₂ for the Phase 1 2014 No-Build case are predicted to be 22,760.3 tons/year. The emissions of CO₂ for the Phase 1 2014 Build case without mitigation are predicted to be 23,245.0 tons/year. The difference between the Phase 1 2014 Build without mitigation and the Phase 1 2014 No-Build CO₂ emissions, 484.7 tons/year, represents the CO₂ emissions released by Project-generated trips, without any mitigation. The transportation mitigation measures are predicted to reduce Phase 1 transportation CO₂ emissions by approximately 12.3%, such that the difference between the Phase 1 Build with Mitigation emissions and the Phase 1 No-Build emissions is 59.8 tons/year.

The greenhouse gas (GHG) analysis estimated the stationary source Base Case total CO₂ emissions, for Phase 1 of the project, to be 4,684 mega watt (MW) hours per year of electricity and 21,532 thousand cubic feet per year of natural gas. For the Preferred Alternative, these energy figures are reduced to 4,365 MW-hours per year of electricity and 19,223 thousand cubic feet per year of gas. The Additional Mitigation Alternative further reduces energy use to 4,308 MW-hours per year of electricity and 18,867 thousand cubic feet per year of natural gas.

Summary of Proposed Mitigation

According to the Expanded ENF, the proponent will mitigate the impacts of the impervious area by conserving approximately half of the site in its current natural state. In conjunction with the Conservation and Management Permit to be issued by NHESP, 50 percent of the site will be placed in a permanent conservation easement. This conservation easement will serve to preserve Priority Habitat as well as mitigate the impacts of the impervious area.

Mitigation measures for transportation emissions include a number of transportation demand management (TDM) strategies and roadway improvements to reduce vehicle trips for Phase 1 of the project. These measures would improve traffic operations, and reduce the Phase 1 Project-related vehicle trips and CO₂ emissions by an estimated 12.3% and improve the Total project-related vehicle trips and CO₂ by 15.5%. Any shortfall in achieving the 25% reduction in the project traffic volume required by the Town of Sandwich and the Cape Cod Commission, may be made up through a one-time financial contribution from the Proponent to be used for onsite transit improvements.

Mitigation measures for stationary source GHG emissions include: maximizing interior day-lighting; installing energy efficient windows to balance and optimize day-lighting, heat loss and solar heat gain; increasing insulation to minimize energy loss; incorporating motion sensors in lighting; using energy efficient, directed, exterior lighting; use water conserving fixtures; collecting and re-using rain water; installing EPA Energy STAR-rated kitchen; providing for storage and collection of recyclables in building design; using building materials with recycled content; using building materials that are manufactured within the region; using rapidly renewable building materials; and using low-VOC building materials in the building process.

In addition, the project will be designed to comply with the Massachusetts Stormwater Management Regulations. An effort has been made through the site planning and preliminary design phases to minimize or reduce the overall quantity of impervious area on site. Under proposed conditions, all of the site stormwater will be collected and treated to the levels outlined in the Massachusetts Stormwater Management Regulations prior to being discharged into one of two infiltration basins on the project site. These infiltration basins will be sized to adequately store, treat and infiltrate stormwater from the 100-year storm event. Additionally, under Phase 1 of the project, the proponent will incorporate a subsurface infiltration system capable of infiltrating the runoff from the building rooftops included in the Mixed-Commercial portion of this development. Finally, the proposed project will require a NPDES Permit for the construction phase of the project.

Waiver Request

The proponent has requested a waiver that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR for the entire project. Consistent with this request, an Expanded ENF was submitted and it was subject to an extended review period. The Expanded

ENF identifies the environmental impacts of the project and describes measures to be undertaken by the proponent to avoid, minimize and mitigate project impacts. They include a discussion of the project's consistency with the criteria for granting a Phase 1 Waiver, identification of environmental impacts associated with Phase 1 and identification of measures to avoid, minimize and mitigate impacts associated with Phase 1.

Criteria for a Phase 1 Waiver

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find 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.

The MEPA regulations at 301 CMR 11.11(4) state that, in the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR, I shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
- (c) the project is severable, such that Phase 1 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**
- (d) the agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Findings

The proponent has met the tests for a Phase 1 Waiver. My determination is based on the information submitted by the proponent, consultation with the relevant state agencies, and consideration of comment letters received. As further outlined below, I have determined that compliance with the requirement to prepare an EIR prior to Phase 1 would not serve to avoid or minimize Damage to the Environment, that adequate and unconstrained infrastructure exists to support the project, that the project is severable, and that agency actions on Phase 1 can be conditioned to ensure compliance with MEPA.

Comments from state permitting agencies do not identify objections to the granting of the Phase 1 Waiver or request additional analysis of environmental impacts associated with the

Phase 1 Waiver request.

Requiring the preparation of an EIR in advance of undertaking Phase 1 would cause undue hardship and would not serve to minimize Damage to the Environment:

The proponent will face undue hardship if not authorized to begin the construction of Phase 1 until after the submittal of the EIR. Denial of the Phase 1 Waiver Request will not serve to avoid or minimize damage to the environment.

I find that a requirement to complete MEPA review prior to initiating the permit process for Phase 1 is not necessary in order for the proponent to demonstrate that it will avoid, minimize, and mitigate potential Damage to the Environment to the maximum extent practicable, and that a requirement to do so would therefore cause undue hardship and would not serve to minimize Damage to the Environment.

1. The potential environmental impacts of Phase 1, taken alone, are insignificant.

The potential impacts of Phase 1, taken alone, are insignificant. Phase 1 will not result in significant damage to the environment because all mitigation measures proposed as part of the project will be implemented in conjunction with Phase 1 of the project. Phase 1 does not require the implementation of Phase 2 or restrict the means by which potential environmental impacts from Phase 2 may be avoided, minimized or mitigated. Based on the foregoing, I find that the potential environmental impacts of Phase 1, taken alone, are insignificant.

2. Ample and unconstrained infrastructure facilities and services exist to support Phase 1.

There is ample infrastructure available to serve this project. The local transportation infrastructure is more than adequate to serve Phase 1 project; with minor adjustments to signalized intersections, which will be performed in conjunction with Phase 1, the transportation system will provide ample capacity. The water supply system has more than adequate capacity. The proponent has proposed to construct a waste water treatment facility for the entire project as part of Phase I, ensuring ample capacity for Phase II of the project. Based on the foregoing, I find that ample and unconstrained infrastructure exists to support Phase 1.

3. The project is severable, such that Phase 1 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.

The development of Phase 1 is severable from the remainder of the project. Phase 1 has independent utilities from Phase 2. Phase 1 and Phase 2 are both economically viable without the other Phase. Moreover, construction of Phase 1 will not restrict the means of mitigating environmental impacts associated with Phase 2. The primary means of mitigating the impacts of

Phase 2 are to set aside a significant portion of the site in a permanent conservation easement, which will be implemented in conjunction with a Conservation and Management Permit from NHESP to be issued as part of Phase 1 of the project.

Based on the foregoing, I find that Phase 1 of the project is severable and 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.

4. The agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

The proponent has met with the NHESP. In accordance with the provisions of 321 CMR 10.18, the project proponent has engaged in a Review of the project for “take” of State Listed Species in Priority Habitat. Pursuant to the provisions of M.G.L. c.131A § 3 and 321 CMR 10.23, the proponent anticipates that a Conservation and Management Permit will be issued for the site in conjunction with Phase 1. In consultation with the NHESP Office, the proponent has agreed to set aside 37.9 acres of the site (50% of the total site) to be maintained in a conservation easement for the protection of the Eastern Box Turtle’s Priority Habitat. In addition, the proponent has agreed to place 26 acres of Cranberry Bog which is offsite into a conservation easement for the protection of the Eastern Box Turtle’s Priority Habitat.

Recognizing the environmentally sensitive condition of the Popponesset watershed, the proponent will install a package wastewater treatment facility in order to drastically reduce the total nitrogen load from the project. This will also include on-site disposal of the treated effluent, which will be in excess of 10,000 gallons per day of wastewater, and require the preparation and filing of a Groundwater Discharge Permit application to MassDEP. The wastewater treatment facility will be constructed as part of Phase 1 of the project and will have sufficient capacity to serve the Full Build of the project. The proponent has also been in close consultation with MassDEP regarding this permit.

Based on the foregoing, I find that there are limited agency actions with respect to Phase 1, but that if necessary those actions will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

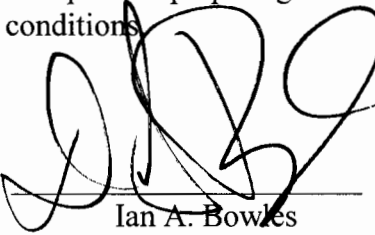
Conclusion

I have determined that this waiver request has merit, and issued a Draft Record of Decision (DROD) on December 30, 2009, which was published in the Environmental Monitor on January 6, 2010 in accordance with 301 CMR 11.15(2), which began the public comment period. The public comment period lasted for 14 days and ended on January 20, 2010. One comment

from the Association to Preserve Cape Cod was received. Accordingly, I hereby **grant** the waiver requested for this project, which will allow the Proponent to proceed with design and permitting of Phase 1 of the project as identified in the Expanded ENF prior to preparing a mandatory EIR for the entire project, subject to the above findings and conditions.

January 22, 2010

Date



Ian A. Bowles

Comments received on the DROD:

01/13/2010 Association to Preserve Cape Cod

Comments Received on the Expanded ENF:

12/10/2009 Sandwich Housing Authority
12/11/2009 Division of Fisheries and Wildlife
12/14/2009 Massachusetts Historical Commission
12/23/2009 Department of Environmental Protection and Department of Energy Resources
12/21/2009 Town of Sandwich, Board of Selectmen
12/23/2009 Cape Cod Commission
12/23/2009 Town of Sandwich Planning and Development
12/28/2009 Town of Sandwich Board of Health
12/30/2009 Cape Cod Commission (2nd Comment Letter)

IAB/ACC/acc