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October 7, 2005

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
ON THE  
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Wareham Road Mixed Use Development  
 PROJECT MUNICIPALITY : Plymouth  
 PROJECT WATERSHED : Buzzards Bay  
 EOEА NUMBER : 13580  
 PROJECT PROPONENT : ADM Agawam Development LLC  
 DATE NOTICED IN MONITOR : July 9, 2005

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 hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR). I have also issued a Draft Record of Decision today proposing to grant a Phase I waiver that would allow the proponent to proceed with development of a 65-unit residential development on a portion of the project site prior to completion of an EIR for the entire project.

The proposed project involves development of 1,185 residential units and 90,000 square feet (sf) of commercial space on a 1,320-acre site. The project will result in approximately 385 acres of land alteration including approximately 100 acres of new impervious area. The remaining 935 acres of the project site will remain as protected open space to include trails and continuing cranberry operations. The proposed project will be developed in two phases. Phase I includes 65 single-family homes on a 65-acre parcel. Phase II consists of the remainder of the project. A significant portion of the project site (primarily in the Phase II area) is located within priority and estimated habitat for rare species. The project site is located in an area well known for its ecological significance due to the presence of the Agawam River, globally-significant pine barrens, and at least 40 state-listed rare species that are known to occur on the project site. The proposed development approach includes the use of innovative zoning tools and conservation restrictions to concentrate development in certain areas and permanently protect significant acreage of land on and off-site.

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Water use is estimated at an average of 286,000 gallons per day (gpd) for the full build-out. An on-site well is proposed to serve potable water supply needs and additional wells are proposed for irrigation use. Individual septic systems are proposed for the Phase I homes and an on-site wastewater treatment facility is proposed for Phase II. The full build-out proposed includes construction of approximately 17 miles of water mains and 15 miles of sewer mains. Traffic impacts for the full project build-out are estimated at an average of 8,266 vehicle trips per day and the project includes construction of 2,600 new parking spaces.

This project proposes to utilize the Town of Plymouth's Transfer of Development Rights (TDR) zoning bylaw and other zoning tools to create a more compact development than would otherwise be allowed under conventional subdivision zoning. The TDR process will result in the permanent protection of open space ("sending parcels") while allowing an increased density of development in other areas ("receiving parcels").

The project is undergoing MEPA review and requires a mandatory EIR pursuant to: Section 11.03(1)(a)(1) of the MEPA regulations because it involves alteration of 50 or more acres of land; Section 11.03 (1)(a)(2) because it involves creation of 10 acres or more of impervious area; Section 11.03(6)(a)6. because it involves generation of 3,000 or more new average daily trips (adt) on roadways providing access to a single location; Section 11.03(6)(a)(7) because it involves construction of 1,000 or more new parking spaces at a single location; Section 11.03(4)(a)(3) because it involves construction of new water mains ten miles or more in length; and Section 11.03(5)(a)(3) because it involves construction of new sewer mains ten or more miles in length. The project is also undergoing MEPA review pursuant to: Section 11.03(2)(b) because it is likely to involve a "take" of a rare species; Section 11.03(4)(b)(1) because it involves withdrawal of 100,000 gallons or more per day (gpd) from a water source that requires new construction for the withdrawal; Section 11.03(5)(b)(1) because it involves construction of a new wastewater treatment facility with a capacity of 100,000 or more gpd; Section 11.03(10)(b)(2) because of potential destruction of an archaeological site listed in the Inventory of Historic and Archaeological Assets of the Commonwealth; and Section 11.03(1)(b)(4) because of the potential conversion of land containing prime or state-important soils to non-agricultural use.

The project requires a 401 Water Quality Certification, a Groundwater Discharge permit, a Water Management Act Permit, New Source Approval and other water supply approvals from the Department of Environmental Protection (DEP). The project also requires an Order of Conditions from the Plymouth Conservation Commission (and on appeal only, a Superseding Order from DEP) and a Conservation and Management Permit from Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). The project will also require a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit from the US Environmental Protection Agency (EPA). The project is also subject to review by the Massachusetts Historical Commission and requires State Archaeologist's Permits.

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

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regulations. In this case, MEPA jurisdiction extends to rare species, historic and archaeological resources, wastewater, wetlands, water quality, water supply, agriculture, land, and stormwater.

### Phase I Waiver Request

In a separate Draft Record of Decision (DROD), I propose to grant the proponent's request for a Phase I Waiver to construct 65 single-family homes on a 65-acre portion of the project site. Phase I will result in 40 acres of land alteration including 9 acres of impervious area. According to the Expanded Environmental Notification Form (ENF), traffic impacts associated with Phase I are estimated at 700 vehicle trips per day and water use is estimated at 24,000 gpd. Phase I includes 2 miles of new water mains and water will be supplied from an on-site well. Individual Title 5 septic systems are proposed to handle wastewater from the proposed Phase I homes. A Transfer of Development Rights (TDR) process and other innovative zoning tools will be utilized to allow a more compact development on the Phase I area while protecting open space off-site at Halfway Pond East. Proposed minimum lot sizes for the Phase I development are 20,000 square feet (sf) instead of the minimum 60,000 sf required under conventional subdivision zoning. The proponent has committed to completion of rare species surveys and archaeological investigations prior to commencement of Phase I. The proponent has also committed to use of Low Impact Development (LID) techniques to minimize stormwater impacts associated with the development. The DROD provides additional details and specific conditions associated with my consideration of the Phase I Waiver request.

### General

The proponent should prepare a Draft EIR (DEIR) 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 DEIR should include a copy of this Certificate, a copy of each comment letter received and a response to all comments received. A Project Summary in clear non-technical language should be included in the DEIR. This section of the document should summarize the project, alternatives analyzed, the type and extent of potential impacts, and mitigation measures that the proponent is committed to. It should also include a list of permits required and a timetable and cost estimate for the project. The DEIR should describe any changes to the project since the filing of the ENF.

The DEIR should include a description of all aspects of the project and a schedule for construction and other development activities. The DEIR should also include maps and plans at a reasonable scale that clearly locate and delineate project elements, priority and estimated rare species habitat, areas proposed for conservation restriction, surface water and wetlands resource areas, adjacent land uses, and aquifer protection districts on or adjacent to the project site.

### Alternatives

The DEIR should include an evaluation of alternatives, including alternative site layouts, to ensure that the proposed project will avoid, minimize and mitigate environmental impacts to the maximum extent feasible. The alternative analysis should include a reduced-build alternative and a conventional subdivision development. The alternatives analysis should also include a no-

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build alternative to establish baseline conditions that can be used to evaluate potential impacts of the proposed project and other alternatives, and to develop appropriate mitigation. As further detailed by NHESP in its comment letter, it is likely that the extent and configuration of Phase II development, as proposed in the ENF, will need to change considerably to achieve adequate rare species habitat protection. I expect the DEIR to include alternative development plans, including a reduced-build alternative and alternative site configurations, that would avoid and minimize impacts to priority habitat areas and other project-related impacts.

The alternative analysis should include a clear comparison of the impacts of each alternative and its project components (including but not limited to acres of land use and alteration, volume of earthwork, impervious area, wetlands, rare species habitat impacts, water use and wastewater generation, traffic and parking).

The alternative analysis should identify opportunities to minimize impervious area from roadways, parking and other structures. The DEIR should also consider alternative access routes and road connections. The alternatives analysis should consider alternative design elements for stormwater management, such as semi-permeable walkways and vegetated islands in parking areas, and consider utilizing stormwater and wastewater for irrigation as alternatives to additional groundwater withdrawals.

The DEIR should evaluate alternative locations for the water supply wells and the wastewater treatment facility and discharge area, discuss the potential environmental impacts of each alternative, and explain why the preferred location is being selected and others eliminated from further consideration. The DEIR should discuss alternative water supply and wastewater management options and describe the rationale for the proponent's preferred alternative. The Town of Plymouth has raised concerns regarding the proposed water and wastewater system and suggested options for the proponent to consider. I encourage the proponent to consult with the Town of Plymouth regarding these issues and to provide an update in the DEIR.

#### Cumulative Impact Analysis

The DEIR should discuss potential conflicts and synergies among proposed site uses, existing cranberry operations, and other proposed developments in the project area. The DEIR should identify any adjacent land owned by the proponent, including land to the south of the project site in Wareham, and clarify if any development is proposed for this area.

The cumulative impact analysis in the DEIR should address potential conflicts and synergies among proposed residential, commercial and agricultural uses at the project site, and describe how the project is being designed to avoid adverse impacts and promote compatibility among different site uses. Potential impacts associated with pesticide use adjacent to residential developments should be addressed. In addition, the DEIR should discuss potential impacts associated with sand and gravel operations at the cranberry bogs. The DEIR should include proposed measures to avoid and minimize impacts.

Cumulative impacts associated with water withdrawal and wastewater should be addressed in the DEIR. The DEIR should describe how the water and wastewater systems are

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being designed and located to avoid and minimize adverse cumulative impacts. The DEIR should clarify the basins from which water will be withdrawn and to which wastewater will be discharged and discuss potential watershed impacts associated with the project.

The DEIR should also address other cumulative impacts of traffic, including potential conflicts with conservation and recreation land use, and ecological impacts associated with increased traffic and erosion on gravel roads, as further detailed in some of the comment letters received.

The DEIR should address cumulative impacts of all phases of the project. I encourage the proponent to consider green building and other sustainable design elements to minimize long-term cumulative impacts associated with the development.

### Land Use and Alteration

The DEIR should describe proposed land uses including the different types of housing that will be provided and the types of commercial uses. The DEIR should provide a summary of overall land alteration with a breakdown indicating the area of land being altered for various project elements including buildings, roadways and parking, landscaping, and utilities and stormwater infrastructure. The DEIR should provide information to justify the proposed number of parking spaces.

The DEIR should clearly locate and delineate areas proposed for development and areas to be left undisturbed. Open space should be clearly delineated on site plans in order to differentiate between areas proposed for lawns/landscaping, open space/recreation and other areas proposed for permanent protection under a conservation restriction (CR). The ENF indicates that vast areas of contiguous habitat will remain undeveloped. The DEIR should clearly map these areas, including on-site areas as well as any conservation areas off-site being used as TDR sending parcels or as other form of mitigation.

The DEIR should include a map locating all TDR sending and receiving parcels associated with the project, with a site description and acreage for each parcel.

### Agriculture

The DEIR should provide a breakdown of soil types and existing agricultural uses and identify any prime or state-important agricultural soils that may be present on the site. The proponent should consult with the Department of Agricultural Resources (DAR) regarding any mitigation that may be required and provide an update on consultations in the DEIR. The DEIR should discuss potential cranberry bog consolidation and decommissioning, and provide a plan for cranberry operations as further detailed in the DAR comment letter.

### Wetlands

All wetlands resource areas on and adjacent to the project site should be clearly identified and delineated on site plans. The DEIR should discuss potential impacts of the project to

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wetland resources and describe measures that will be implemented to avoid and minimize adverse impacts.

The DEIR should clarify potential impacts to wetlands including Bordering Land Subject to Flooding and Riverfront Area, and discuss any compensation or other mitigation required. The DEIR should include the amount and location of buffer zone impacts and provide information on the specific buffer width to be provided along the Agawam River corridor.

The DEIR should provide additional information to demonstrate how the project will comply with floodplain regulations and other requirements as further detailed in the comment letter from the Department of Conservation and Recreation (DCR). The DEIR should demonstrate how the project will comply with applicable Wetlands Protection Act regulatory requirements. The DEIR should include plans and other information required for the Notice of Intent and 401 Water Quality Certification process as further detailed in the DEP comment letter.

#### Water Supply and Water Quality

The DEIR should provide a detailed description of the proposed water supply system and discuss how the project will meet DEP permitting requirements and promote water conservation. The DEIR should also discuss plans for ownership and management of the water supply system. The DEIR should discuss any plans to extend the water supply system to adjacent residential areas and clearly document estimated water uses for the proposed project as well as potential additional water users. The DEIR should quantify water demand for each phase of the project according to use and include a break-out for residential, commercial, irrigation and any other anticipated uses.

The DEIR should identify proposed locations of wells, including irrigation wells, and evaluate potential impacts on site hydrology, surface waters, and wetlands resource areas. Site plans should include delineations of the Zone I and Zone II of existing and proposed wells. The DEIR should include an evaluation of the impact of proposed wells on Agawam River and Red Brook, existing and proposed public water supplies, and agricultural operations. The DEIR should evaluate potential water withdrawal impacts on anadromous fish in light of the significance of the Agawam River corridor fish run. The proponent should consult with the Division of Marine Fisheries (DMF) regarding their comments and concerns relating to fisheries impacts. The DEIR should provide an update on consultations with DMF and include information to address issues raised by DMF. The DEIR should include an analysis of potential impacts of proposed water withdrawals on seasonal stream flow. The DEIR should also include an analysis of potential alteration of points of hydraulic control within the Agawam River system.

As noted in the ENF and in comment letters received, the aquifer underlying the project site is an important drinking water resource and susceptible to contamination due to permeable sandy soils. The DEIR should discuss potential project impacts to the underlying aquifer and measures proposed to ensure protection of water resources.

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The proponent should consider landscaping approaches that minimize the need for irrigation (e.g. reduced lawn areas, natural plantings, and other xeriscaping techniques) and describe proposed water conservation measures in the DEIR. The DEIR should explain measures proposed to address potential water quality impacts from the use of pesticides, herbicides and fertilizers.

The DEIR should describe proposed on and off-site road improvements associated with the project. The DEIR should evaluate potential water quality impacts associated with roadway improvements and increased traffic on local roadways. The DEIR should describe stormwater management plans and other measures to avoid and minimize any adverse impacts to water quality.

As further detailed in its comment letter, the Town of Plymouth raised concerns regarding water storage, fire protection and other public safety issues. I encourage the proponent to consult with the Town of Plymouth regarding these issues and to provide an update in the DEIR. The DEIR should also discuss the proposed project as it relates to the Wright-Pierce Master Plan referenced in the Town of Plymouth comment letter.

#### Wastewater

The DEIR should provide a detailed description of the proposed wastewater treatment and discharge facility. The DEIR should include an evaluation of the potential wastewater system impacts on groundwater hydrology, surface water and wetlands resources in the project area. The DEIR should also discuss impacts and mitigation associated with potential nutrient loading to water resources, a concern raised in several comment letters received.

The DEIR should clarify ownership and management arrangements for the wastewater treatment and disposal system and demonstrate how the project is being designed to ensure that adverse impacts to water quality will be avoided and minimized. The DEIR should also provide an update on discussions with the Town of Plymouth regarding connections from existing developments to the proposed sewer system. The DEIR should clarify what connections, if any, are proposed and provide a breakdown of wastewater volumes generated by the proposed project and by other developments that may utilize the wastewater system.

The proponent should consult with DEP regarding commonality issues relating to Phase I and Phase II as further detailed in the DEP comment letter. The DEIR should provide an update on consultations with DEP and the groundwater discharge permit process.

#### Rare Species

As discussed in the ENF and noted by many commenters, the majority of the project site is located within Priority and Estimated Habitat of state-listed rare species. At least 40 state-listed species have been documented to occur within the Priority Habitat associated with the project site. The site includes globally-significant pine barrens that provides habitat for many of the state-listed species.

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The proponent has initiated rare species surveys following NHESP-approved survey protocols. The DEIR should provide the results of the rare species surveys (Phase I and Phase II) and any changes to the project design as a result of the surveys. The proponent should continue consultations with NHESP regarding design of a Phase II project that avoids a take or complies with MESA permitting standards. The DEIR should clarify whether or not the project will involve a "take" and if so, the DEIR should demonstrate how the project will meet MESA permitting standards. The DEIR should present project plans that minimize direct impacts to, and fragmentation of, important rare species habitat areas.

The DEIR should provide an update on the Conservation and Management permitting process, and should describe, and make clear commitments to, mitigation measures proposed for protection of rare species and their habitat.

#### Open Space and Habitat Conservation

As further detailed by NHESP in its comment letter, the Phase II area contains the Agawam River corridor, extensive pine barrens and outstanding state-listed rare species habitat. If the project will result in a "take" of rare species, a conservation plan will be required that provides a "net benefit" to each impacted rare species. The DEIR should include information on mechanisms proposed to ensure permanent protection of proposed habitat conservation areas. The DEIR should include drafts of Conservation Restrictions (CR) proposed. The DEIR should discuss the rationale behind selection of certain areas for conservation, development, trail networks and other project elements with regard to their habitat value and environmental sensitivity. The DEIR should clarify activities that will be allowed within open space areas and discuss public access provisions and management plans to ensure protection of ecological resources. The DEIR should provide information on proposed trail network locations and design, including connections to trails and conservation lands in the project area.

#### Stormwater and Drainage

The DEIR should provide a detailed description of the proposed stormwater management system including proposed LID features, and a drainage analysis. The DEIR should provide additional information to demonstrate how the proposed stormwater management system will achieve DEP stormwater management policy standards. The DEIR should discuss arrangements for ownership and maintenance to ensure long-term effectiveness of the system. The DEIR should discuss how proposed changes in site drainage may impact hydrology and water quality of local river systems, rare species habitat, vernal pools and other wetlands resources on and adjacent to the site, and describe how the project is being designed to avoid and minimize adverse impacts.

#### Historical and Archaeological Resources

The project site includes two known sites that are listed in the MHC inventory of Historic and Archaeological Assets of the Commonwealth and contains areas considered as highly sensitive for the presence of archaeological resources. One of the recorded sites is located within the Phase I project area and the other is located within the Phase II portion of the project site.

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The proponent should conduct an intensive (locational) archaeological survey for all high and moderate archaeologically sensitive area as requested by MHC in its comment letters. The DEIR should provide an update on the results of archaeological surveys for the entire project site (including Phase I and II areas), as well as an update on consultations with MHC. The DEIR should discuss any proposed changes to project design as a result of the surveys and any mitigation proposed to protect historical and archaeological resources.

### Transportation

Although the project does not require a state highway access permit, the potential traffic impacts on the Route 3/Clark Road interchange are significant. The proponent of the Pine Hills development has recently implemented improvements to this intersection as mitigation for that development. The proposed project may result in additional mitigation requirements for the Route 3/Clark Road intersection. I have received several comments regarding the potential significance of project's traffic impacts. While beyond my authority to require, I believe it would be most appropriate to address these issues in the EIR, and I encourage the proponent to include a traffic study and mitigation plan in the DEIR as requested by MHD and the Town of Plymouth and outlined below.

The DEIR should include a traffic study prepared in conformance with the EOEA/EOTC Guidelines for EIR/EIS Traffic Impact Assessments and should identify appropriate mitigation measures for areas where the project will impact traffic operations. The DEIR should include capacity analyses, merge and weave analysis, and a summary of average and 95<sup>th</sup> percentile vehicle queues for each intersection within the study area. The study area should include the roads and intersections recommended by the Town of Plymouth Board of Selectmen in its comment Letter (9/29/05). The DEIR should address potential traffic impacts on the Town of Wareham and any mitigation proposed. I encourage the proponent to consult with the Town of Wareham and Old Colony Planning Council regarding the traffic study and to incorporate their recommendations into the traffic study design. The DEIR should also include information on background traffic volumes and patterns, roadway adequacy, and any proposed improvements as recommended by the Town of Plymouth in its comment letter.

The ENF indicates that most of the traffic generated by the proposed project will utilize the Route 3/Clark Road interchange, which is in the vicinity of the PineHills development. The proponent of Pine Hills is responsible for improvements at this location based on cumulative impacts of phases of the Pine Hills development. As further detailed in the MHD comment letter, impacts associated with the proposed Wareham Road Mixed Use Development may necessitate further mitigation of the Route 3/Clark Road interchange. The proponent should consult with MHD and the Pine Hills proponent to determine the most appropriate mitigation solution for impacts at the Route 3/Clark Road interchange.

The proponent has committed to addressing Transportation Demand Management (TDM) as part of the Phase II impact analysis. I strongly encourage the proponent to include a TDM plan in the DEIR. The TDM plan should demonstrate how the project will promote pedestrian and bicycle activities and reduce vehicle travel to and from the site. The DEIR should describe on-site amenities that will be provided to encourage pedestrian activity on-site and reduced

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vehicle trips off-site. As part of a TDM program for the proposed project, the proponent should investigate opportunities for a joint shuttle bus service with the proponent of the Pine Hills development.

The DEIR should include any conceptual plans for proposed roadway improvements as further detailed in the MHD comment letter and provide information on any proposed land takings that may be associated with these improvements. The DEIR should include an update on the local permitting process with regard to state highway issues. I strongly encourage the proponent to consult with MHD regarding state highway issues prior to local meetings or hearings.

### Construction and Demolition

The DEIR should include a construction management plan (CMP) describing project activities and their schedule and sequencing, site access and truck routing, and best management practices (BMPs) that will be used to avoid and minimize adverse environmental impacts. The CMP should address potential impacts and mitigation relating to land disturbance, noise, dust, odor, nuisance, vehicle emissions, construction and demolition debris, and construction-related traffic. The DEIR should discuss plans for reuse and recycling of construction materials. I strongly encourage the proponent to commit to diesel retro-fit and use of low sulfur fuel to reduce air quality impacts associated with construction equipment.

### Sustainable Development

The DEIR should describe the project's consistency with the Office of Commonwealth Development (OCD) Ten Sustainable Development Principles. In addition to habitat conservation opportunities presented through the TDR approach and TDM measures as part of the proponent's Smart Growth plan, the proposed project presents a great opportunity to model green building and other sustainable design features. In the spirit of Principle #5 "Conserve Natural Resources", I encourage the proponent to consider high-performance buildings and other sustainable design elements that can provide economic and environmental benefits. The basic elements of a sustainable design program may include, but not be limited to, the following measures:

- Leadership in Energy and Environmental Design (LEED) certification;
- water conservation and reuse of wastewater and stormwater;
- ecological landscaping;
- use of Low Impact Development (LID) techniques;
- optimization of natural day lighting, passive solar gain, and natural cooling;
- use of energy efficient Heating, Ventilation and Air Conditioning (HVAC) and lighting systems, appliances and other equipment, and use of solar preheating of makeup air;
- favoring building supplies and materials that are non-toxic, made from recycled materials, and made with low embodied energy;
- provision of easily accessible and user-friendly recycling system infrastructure into building design;
- development and implementation of a solid waste minimization and recycling plan;

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- development and implementation of an annual audit program for energy consumption, waste streams, and use of renewable resources.

The DEIR should discuss sustainable design elements evaluated by the proponent and describe and commit to measures proposed to promote sustainable development.

#### Mitigation

The DEIR should describe all measures to avoid, minimize and mitigate adverse effects on the environment and include a summary of mitigation measures to which the proponent is committed. The DEIR should include proposed Section 61 Findings for all state permits. The mitigation summary and proposed Section 61 Findings should describe mitigation measures to be implemented, contain a clear commitment to mitigation and a schedule for implementation, and identify parties responsible for funding and implementing the mitigation measures.

#### Comments

The DEIR should respond to the comments received on the ENF 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 DEIR should present any additional narrative or quantitative analysis necessary to respond to the comments received.

#### Circulation

The DEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to the list of "comments received" below. A copy of the DEIR should be made available for public review at the Plymouth and Wareham Public Libraries.

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DATE

  
 Stephen R. Pritchard, Secretary

#### Comments Received (continued on next page):

7/22/05	Division of Marine Fisheries
7/27/05	Vanasse Hangen Brustlin, Inc. (on behalf of the proponent)
8/04/05	Department of Conservation and Recreation
8/09/05	Department of Environmental Protection, Southeast Regional Office
8/15/05	Pinewoods
8/26/05	Town of Wareham, Department of Planning
8/31/05	The Nature Conservancy
8/31/05	Southeastern Regional Planning & Economic Development District (SRPEDD)
9/12/05	Department of Agricultural Resources
9/12/05	Six Ponds Association

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9/13/05 The Coalition for Buzzards Bay  
9/13/05 Wildlands Trust  
9/13/05 Mass Audubon  
9/13/05 Watershed Action Alliance  
9/13/05 William S. Abbott  
9/13/05 Therese Murray, State Senator, Plymouth and Barnstable District  
9/13/05 Steven Whitney, Old Colony Council, Boy Scouts of America  
9/13/05 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species  
Program (NHESP)  
9/13/05 Mettie Whipple  
9/14/05 Massachusetts Historical Commission  
9/21/05 Town of Plymouth, Planning Board  
9/23/05 Old Colony Planning Council  
9/28/05 Town of Plymouth, Board of Selectmen  
9/30/05 Executive Office of Transportation, Office of Transportation Planning  
9/30/05 Vanasse Hangen Brustlin, Inc. (VHB) (on behalf of the proponent)  
10/6/05 Massachusetts Historical Commission

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**DRAFT RECORD OF DECISION**

PROJECT NAME : Wareham Road Mixed Use Development  
 PROJECT MUNICIPALITY : Plymouth  
 PROJECT WATERSHED : Buzzards Bay  
 EOEA NUMBER : 13580  
 PROJECT PROPONENT : ADM Agawam Development LLC  
 DATE NOTICED IN MONITOR : July 9, 2005

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed this project and hereby **propose to grant a Phase I Waiver** to allow commencement of the first phase of the project prior to completion of the Environmental Impact Report (EIR) for the entire project. A Certificate on the Expanded Environmental Notification Form (ENF) with a Scope for the Draft EIR (DEIR) has been issued separately.

Project Description

The proposed project involves development of 1,185 residential units and 90,000 square feet (sf) of commercial space on a 1,320-acre site. The project will result in approximately 385 acres of land alteration including approximately 100 acres of new impervious area. The remaining 935 acres of the project site will remain as protected open space that will include trails and continuing cranberry operations. The proposed project will be developed in two phases. Phase I includes 65 single-family homes on a 65-acre parcel. Phase II consists of the remainder of the project.

According to the Expanded Environmental Notification Form (ENF), Phase I will result in alteration of 40 acres of land including 9 acres of impervious area. Traffic impacts associated with Phase I are estimated at 700 vehicle trips per day. Individual Title 5 septic systems are proposed to handle wastewater from the proposed Phase I homes. Water use for Phase I is estimated at 24,000 gpd and will be supplied from an on-site well. Phase I also includes 2 miles of new water mains, 1.8 miles of new roadway and improvements to a portion of the existing Wareham Road.

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### Jurisdiction

The project is undergoing MEPA review and requires a mandatory EIR pursuant to: Section 11.03(1)(a)(1) of the MEPA regulations because it involves alteration of 50 or more acres of land; Section 11.03 (1)(a)(2) because it involves creation of 10 acres or more of impervious area; Section 11.03(6)(a)(6) because it involves generation of 3,000 or more new average daily trips (adt) on roadways providing access to a single location; Section 11.03(6)(a)(7) because it involves construction of 1,000 or more new parking spaces at a single location; Section 11.03(4)(a)(3) because it involves construction of new water mains ten miles or more in length; and Section 11.03(5)(a)(3) because it involves construction of new sewer mains ten or more miles in length. The project is also undergoing MEPA review pursuant to: Section 11.03(2)(b) because it is likely to involve a "take" of a rare species; Section 11.03(4)(b)(1) because it involves withdrawal of 100,000 gallons or more per day (gpd) from a water source that requires new construction for the withdrawal; Section 11.03(5)(b)(1) because it involves construction of a new wastewater treatment facility with a capacity of 100,000 or more gpd; Section 11.03(10)(b)(2) because of potential destruction of an archaeological site listed in the Inventory of Historic and Archaeological Assets of the Commonwealth; and Section 11.03(1)(b)(4) because of the potential conversion of land containing prime or state-important soils to non-agricultural use.

The project requires a 401 Water Quality Certification, a Groundwater Discharge permit, a Water Management Act Permit, New Source Approval and other water supply approvals from the Department of Environmental Protection (DEP). The project also requires an Order of Conditions from the Plymouth Conservation Commission (and on appeal only, a Superseding Order from DEP) and a Conservation and Management Permit from Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). The project will also require a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit from the US Environmental Protection Agency (EPA). The project is also subject to review by the Massachusetts Historical Commission (MHC) and requires State Archaeologist Permits.

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 rare species, historic and archaeological resources, wastewater, wetlands, water quality, water supply, agriculture, land, and stormwater.

### Waiver Request

On June 30, 2005, the proponent requested that I grant a waiver to allow Phase I of the project to proceed in advance of completion of the EIR. The waiver request was submitted with

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the Expanded Environmental Notification Form (ENF), and it was discussed at the consultation/scoping session that was held on July 29, 2005 and again at a second site visit on August 25, 2005. As proposed, Phase I consists of the construction of 65 single-family homes on a 65-acre portion of the project site. Phase I involves a Transfer of Development Rights (TDR) to allow a more compact development on the Phase I area while protecting open space off-site at Halfway Pond East. Proposed lot sizes for the Phase I development are 20,000 square feet (sf) instead of the minimum 60,000 sf required under conventional subdivision zoning.

#### 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 undue hardship to the proponent, unless based on delay in compliance by the proponent; and b) not serve to minimize or avoid 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 I of the project prior to preparing an EIR, the finding required under Section 11.11(1)(b) shall be based on a determination that: 1) the potential environmental impacts of Phase I are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase I; 3) the project is severable, such that Phase I does not require the implementation of any other future phase 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 I will contain terms, such as a condition or restriction in a permit to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

- a) Requiring completion of a mandatory EIR prior to Phase I of the project would result in undue hardship for the proponent; and
  - b) Requiring completion of a mandatory EIR prior to Phase I of the project would not serve to avoid or minimize Damage to the Environment.
1. The potential environmental impacts of Phase I, taken alone, are insignificant. Phase I alone does not trigger any mandatory EIR thresholds. The majority of the proposed Phase I lies outside of mapped Priority Habitat. The NHESP does not object to the granting of a Phase I Waiver for the project provided that certain conditions are met as further detailed below and in the NHESP comment letter.

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The proponent has committed to a TDR that will protect at least 90 acres of land in the Halfway Pond East, and to the use of Low Impact Development (LID) techniques to minimize impacts associated with land alteration and impervious area. The proponent has committed to erosion and sedimentation controls to protect wetlands resources, nitrogen reducing technology for proposed septic systems and other mitigation measures as further detailed in the Expanded ENF. The proponent has also committed to completion of rare species and archaeological surveys prior to commencement of Phase I.

Although I find that the potential impacts of Phase I are insignificant, I acknowledge the comments and concerns of NHESP, MHC, the Department of Agricultural Resources (DAR), the Division of Marine Fisheries (DMF) and other commentors, and note that this finding of insignificance is conditional upon the proponent's compliance with the following requirements.

As conditions of this Waiver:

*Rare Species*

- Improvements to Wareham Road will be considered temporary, pending completion of the Phase II permitting process with NHESP;
- The proponent must complete rare species surveys of the Phase I area following NHESP-approved protocols prior to the start of Phase I construction;
- Phase I must avoid a "take" of state-listed rare species or the proponent must apply for a Conservation and Management Permit (321 CMR 10.23) prior to construction, should the surveys result in detection of rare species within the Phase I area;
- The proponent must satisfy NHESP survey and permitting requirements prior to the start of Phase I construction;
- The proponent must adhere to all conditions outlined in a letter from Doug Landry of VHB dated July 27, 2005 (attached);
- As part of the TDR process for Phase I, a Conservation Restriction (CR) must be placed on a minimum of 90 acres of land in the proponent's Halfway Pond east parcel. The location and details of this CR must be approved by NHESP;
- The proponent must coordinate with NHESP regarding the proposed Phase I well location, design and construction, as well as the paving of Wareham Road and the Phase I access road, to ensure potential impacts to Priority Habitat are adequately avoided and minimized or mitigated.

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*Historical and Archaeological Resources*

- The proponent must complete an intensive archaeological (locational) survey as required by MHC and as further detailed in its comment letters on the ENF;
- The proponent must complete consultations with MHC, prior to Phase I construction, regarding the survey results and any design changes and/or mitigation that may be required for the Phase I area to protect historic and archaeological resources.

*Wastewater Management*

- The proponent must provide the Town of Plymouth with a detailed description of the nitrogen-reducing technology proposed for the Phase I septic systems;
- The proponent must provide sufficient information to the Town of Plymouth to substantiate the statement in the ENF that the proposed Phase I septic systems will not result in any significant impacts to Buttermilk Bay.

*Agricultural Resources*

- The proponent must provide additional information to the DAR regarding the soils in the Phase I area and consult with DAR to determine if the soils are considered of state or local significance to farming and whether any mitigation may be required;
- The proponent must provide additional information to DAR regarding the proposed Phase I well including its location and potential Zone I and Zone II impacts on agricultural operations;
- The proponent must consult with DAR prior to filing with DEP for a Phase I water supply permit and include information on potential agricultural impacts of the proposed well to DEP during the new source approval process.

*Agawam River and Fisheries Resources*

- The proponent must consult with DMF prior to filing with DEP for a Phase I water supply permit and, based on these consultations, provide additional information to DMF regarding the proposed Phase I well including its potential stream flow impacts and potential alteration of hydraulic control within the Agawam river system; and
- The proponent must provide information on potential stream flow and river system impacts of the proposed well to DEP during the new source approval process.

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2. Ample and unconstrained infrastructure facilities and services exist to support Phase I. The Phase I homes will be served by an on-site well and Title 5 sewage disposal systems. DEP has not objected to the proponent's request for a Phase I Waiver and has determined that water supply and wastewater issues can be adequately addressed during the permit process. Phase I will utilize, and improve portions of, the existing Wareham Road. Traffic impacts associated with Phase I are minimal and the Massachusetts Highway Department (MHD) has indicated in its comment letter that the Waiver request has merit and that the ENF has adequately documented Phase I traffic impacts. Although traffic impacts associated with Phase I are insignificant, the entire project will result in significant traffic impacts. Therefore, I strongly encourage the proponent to conduct a traffic analysis and prepare a mitigation plan as further detailed in Scope for the Draft EIR.
3. The project is severable, such that Phase I does not require the implementation of any future phase of the project or restrict the means by which other potential environmental impacts from any other phase of the project may be avoided and minimized or mitigated. The proposed homes to be developed during Phase I do not require the implementation of any future phase. Phase I will result in alteration of approximately 40 acres of the 1,320-acre site. An alternatives analysis for the remainder of the project site will be included in the EIR providing opportunities to consider alternative levels of development and site configurations, open space and habitat conservation plans, and project design changes that may serve to avoid and minimize, or mitigate environmental impacts from any other phase of the project.

I acknowledge the comment letters received indicating that a Phase I Waiver could restrict the potential for increased density of development in the Phase I area, which could serve to avoid and minimize, or mitigate impacts to Priority Habitat located in the proposed Phase II areas. However, the critical state agency action for the entire project is likely to be a Conservation and Management Permit and NHESP has not objected to the Phase I Waiver provided that certain conditions are met. I also remind the proponent that changes to the level of development and configuration proposed for Phase II may be necessary in order to provide adequate rare species habitat protection and avoid, minimize or mitigate other project impacts. As required by the Certificate on the Expanded ENF, the Draft EIR must include an alternatives analysis for Phase II that includes a reduced-build alternative.

4. The Phase I portion of the project requires a new source approval from DEP and may require a Conservation and Management Permit from NHESP. State agency actions on Phase I will contain conditions that ensure due compliance with MEPA prior to commencement of any other phase of the project.

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Providing the conditions of this waiver are met, I am satisfied that Phase I of this project will be implemented in a manner that avoids, minimizes and mitigates impacts to the maximum extent feasible such that the potential environmental impacts of Phase I are insignificant. I am also satisfied that remaining issues can be adequately addressed during the state and local permit and review process. Based on these findings, I determine that the waiver request has merit and meets the tests established in Section 11.11. Therefore, I propose granting the Phase I waiver requested for this project. This Draft Record of Decision (DROD) shall be published in the October 24, 2005 issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

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DATE

Stephen R. Pritchard, Secretary

## Comments received (continued on next page)

7/22/05	Division of Marine Fisheries
7/27/05	Vanasse Hangen Brustlin, Inc. (on behalf of the proponent)
8/04/05	Department of Conservation and Recreation
8/09/05	Department of Environmental Protection, Southeast Regional Office
8/15/05	Pinewoods
8/26/05	Town of Wareham, Department of Planning
8/31/05	The Nature Conservancy
8/31/05	Southeastern Regional Planning & Economic Development District (SRPEDD)
9/12/05	Department of Agricultural Resources
9/12/05	Six Ponds Association
9/13/05	The Coalition for Buzzards Bay
9/13/05	Wildlands Trust
9/13/05	Mass Audubon
9/13/05	Watershed Action Alliance
9/13/05	William S. Abbott
9/13/05	Therese Murray, State Senator, Plymouth and Barnstable District
9/13/05	Steven Whitney, Old Colony Council, Boy Scouts of America
9/13/05	Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP)
9/13/05	Mettie Whipple
9/14/05	Massachusetts Historical Commission
9/21/05	Town of Plymouth, Planning Board
9/23/05	Old Colony Planning Council

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9/28/05 Town of Plymouth, Board of Selectmen  
9/30/05 Executive Office of Transportation, Office of Transportation Planning  
9/30/05 Vanasse Hangen Brustlin, Inc. (VHB) (on behalf of the proponent)  
10/6/05 Massachusetts Historical Commission

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