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October 28, 2009

FINAL AMENDED RECORD OF DECISION

PROJECT NAME : ADM Tihonet Mixed Use Development  
PROJECT MUNICIPALITY : Carver, Plymouth and Wareham  
PROJECT WATERSHED : Buzzards Bay  
EEA NUMBER : 13940A  
PROJECT PROPONENT : ADM Development Services LLC  
DATE NOTICED IN MONITOR : October 7, 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 Notice of Project Change (NPC) and request for an amended Phase One Waiver, and hereby **grant** a waiver that will allow the Proponent to proceed with Phase One of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project.

Project Description

As described in the Expanded ENF, the entire project entails development of a 6,074-acre site in the towns of Wareham, Carver and Plymouth, which is proposed as a phased development over the next 25 years or more. The site currently contains the corporate headquarters of the A.D. Makepeace (ADM) Company, and includes cranberry bogs as well as undeveloped lands considered ecologically significant due to the presence of BioMap Core Habitat, Priority Habitat for rare and endangered species, and the underlying sole source aquifer. The phased development as proposed in the Expanded Environmental Notification Form (ENF) submitted in July 2008 consists of a mixed-use village community that will incorporate principles of smart growth, open space preservation, low impact development, traditional village design, and pedestrian orientation. The Expanded ENF proposes the use of Transfer of Development Rights (TDR) to concentrate development in certain areas and ensure conservation of ecologically significant lands.

Phase One (referred to as Phase A in the NPC) involves construction of an office and light industrial development on an approximately 16-acre portion of the site (A1), construction of a medical office building on a 13-acre portion of the site (A2), and a 5-acre cranberry bog development (A3). Phase One is located within the Town of Wareham.

### MEPA History

In accordance with the Special Review Procedure (SRP) for the project dated January 29, 2007, the Proponent filed an Expanded ENF (July 2008) that included a baseline environmental resource assessment and infrastructure assessment for the entire project site, and information and analysis pertaining to the proposed Phase A and Phase B developments. Pursuant to the SRP, the Certificate on the Expanded ENF, dated September 12, 2008, included a Scope for the EIR for Phase B (the Business Development Overlay and General Commercial District (BDOD)) and for certain aspects and impacts of Phase C. The SRP allows for subsequent phases of the project to file a new ENF and includes requirements for cumulative impact assessment, public outreach, and extended public comment periods. I also issued a Final Record of Decision (FROD) on October 15, 2008 granting a waiver that allowed the Proponent to proceed with Phase A of the project prior to preparing a mandatory EIR for the entire project.

The current NPC filing entails a request for an amended Phase One waiver. As previously proposed, Phase A included two phases (A1 and A2). Phase A1 consisted of 115,000 square feet (sf) of office and light manufacturing space located in the southeastern quadrant of the 60-acre Tihonet Technology Park. Phase A2 consisted of a 40,000 sf medical office building on a six-acre parcel located on Lou Avenue off Route 28. Changes to Phase A as proposed in the NPC include a reduction in the size of Phase A1, relocation and increase in size of Phase A2, and a new Phase A3 component consisting of construction of a 5-acre cranberry bog.

### MEPA Jurisdiction and Permitting

Permits required for Phase A include a Vehicular Access Permit from the Massachusetts Highway Department (MassHighway) for access onto Route 28 and a Conservation and Management Permit from the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). Phase A also requires an Order of Conditions from the Wareham Conservation Commission (and, on appeal only, a Superseding Order from the Massachusetts Department of Environmental Protection (MassDEP)).

The project is subject to the MEPA Greenhouse Gas Emissions Policy and Protocol. The project is subject to review by the Massachusetts Historical Commission (MHC) and may be subject to federal consistency review by the Massachusetts Office of Coastal Zone Management (CZM). The project is also subject to the U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) permit requirements for construction activities.

Future phases of the project require additional permits. Phase B as proposed in the Expanded ENF requires a MassHighway Vehicular Access Permit, a Conservation and Management Permit from NHESP, and an Order of Conditions from the Wareham Conservation Commission (and, on appeal only, a Superseding Order from MassDEP). Phase B also requires a Groundwater Discharge Permit, 401 Water Quality Certification, Water Supply System Distribution Modification, and a Sewer Extension/Connection Permit from MassDEP. Phase C will require additional permits including a Groundwater Discharge Permit and New Source Approval from MassDEP, and a Conservation and Management Permit from NHESP.

The project is undergoing environmental review and subject to the requirements for an EIR because it requires state Agency Actions and exceeds MEPA review thresholds, including several thresholds for a mandatory EIR. The project is undergoing review pursuant to the following sections of the MEPA regulations: Section 11.03(1)(a)(1) and (2) because it will involve alteration of 50 or more acres of land and creation of 10 or more acres of new impervious area; Section 11.03(2)(b)(2) because it will likely result in a taking of a state-listed species; Section 11.03 (3)(b)(d) and (f) because it involves alteration of 5,000 or more sf of Bordering Vegetated Wetlands (BVW) and alteration of one-half or more acres of other wetlands; Section 11.03(4)(b)(3) because it involves construction of one or more new water mains five or more miles in length; Section 11.03(5)(b)(3)(c) because it will result in construction of five or more miles of new sewer main; and Section 11.03(6)(a)(6) and (7) because it will result in generation of 3,000 or more new vehicle trips and 1,000 or more new parking spaces. Phase B may also exceed the mandatory EIR threshold at 11.03(1)(1)(a) for alteration of one or more acres of BVW. Phase C may exceed other MEPA review thresholds.

The Proponent has applied for financial assistance from the Commonwealth, including grants from the Massachusetts Technology Collaborative, and is likely to apply for additional funding such as financial assistance from the Massachusetts Opportunity Relocation and Expansion (MORE) Program. Because the project involves financial assistance from the Commonwealth, MEPA jurisdiction is broad and extends to all aspects of the project likely to cause damage to the environment as defined in the MEPA regulations.

#### Summary of Potential Environmental Impacts Associated With Phase A

The proposed Phase A involves alteration of approximately 40.6 acres of land, including 13.9 acres of impervious area. Phase A will impact approximately 1,682 sf of BVW associated with a proposed wetland crossing at Rose Brook to access the Phase A2 area (Rosebrook Business Center). Additional wetlands impacts include 210 linear feet of Bank alteration, 28,200 sf of Riverfront Area alteration, and 36,810 sf of impact to Bordering Land Subject to Flooding (BLSF). Phase A will result in a “take” of a state-listed Species of Special Concern, the Eastern Box Turtle (*Terrapene carolina*).

Phase A1 has been reduced in size from what was presented in the Expanded ENF and approved in the previously-issued FROD (a 115,000 sf building) to an 80,000 sf building, and the

ratio of office to light manufacturing space has been modified. As a result, traffic generation is expected to decrease from 828 trips per day, as previously reviewed, to 450 trips per day. Parking spaces have been reduced from 407 to 256 spaces. The Phase A2 building has increased in size from 40,000 sf (as approved in the previously-issued FROD) to 65,850 sf to accommodate the new tenant, and Phase 2 also includes a 5,000 sf gatehouse, which will be unoccupied but may be used for storage and office space in the future. Traffic generation for Phase A2 is expected to increase from 1,422 trips per day as previously reviewed to 2,478 trips per day. Parking spaces for Phase A2 have increased from 170 to 279 spaces. Overall the proposed Phase A changes from what was approved in the previously-issued FROD result in an increase of 678 trips per day for a total of 2,928 trips and parking spaces are reduced by 42 for a total of 535 spaces. The increase in impervious area (2.6 acres) is primarily associated with the proposed Lou Avenue extension to the Phase 2 area and Tihonet Road connection, which will provide two access points to the site.

Based on the Proponent's analysis, Greenhouse Gas (GHG) emissions associated with Phase A, are estimated to be 1,722 tons per year for building-related CO<sub>2</sub> emissions and 7,972 to 8,365 tons per year of CO<sub>2</sub> from indirect transportation sources.

The Phase A1 water demand is estimated in the NPC at 2,748 gallons per day (gpd) and Phase A2 is estimated at 2,470 gpd for a total water demand of 5,218 gpd. Municipal water supply and fire services will be provided by the Town of Wareham. Wastewater generation is estimated at 5,496 gpd for Phase A1 and 4,940 gpd for Phase A2. Phase A1 will be served by a Title 5 septic system with enhanced nitrogen removal. As previously proposed, connection to the Wareham Sewage Treatment Plant is the preferred alternative for Phase A2 wastewater (a Title 5 system with enhanced nitrogen removal is proposed if the municipal connection is not feasible).

Water demand and wastewater flows have decreased for Phase A1 and A2 since the previous filing due to the proposed changes in building size and uses. The additional water demand overall for Phase A as indicated in the NPC is associated with the proposed cranberry bog (Phase A3) that will use approximately 26,780 gpd. This water withdrawal is included in the existing MassDEP Water Management Act permits for the agricultural operations on-site.

#### Summary of Proposed Mitigation Measures For Phase A

*Rare Species:* The Proponent will implement mitigation as required by NHESP including Eastern Box Turtle protection during construction and permanent protection of 24 acres of Box Turtle Habitat.

*Wetlands:* The Proponent will provide mitigation at a ratio of 1:1 or greater for unavoidable alterations to wetland resource areas in accordance with the Wetlands Protection Act and the Town of Wareham Wetlands Protection Bylaw. The Proponent has identified areas on-site for BVW replication.

*Transportation:* The Proponent will implement off-site improvements along Route 28 consisting

of signalization and reconstruction of the Route 28/Lou Avenue intersection, optimization of the signal timing and phasing at the I-195 interchange ramps, and upgrading of signs and pavement markings at the Route 28/Tihonet Road, Cranberry Road/Tihonet Road, Cranberry Road/Federal Road, and Wareham Street/Hammond Street intersections. Transportation Demand Management (TDM) measures include: pedestrian improvements, bicycle accommodations and measures to encourage tenant use of traffic reduction strategies such as ridesharing, public transportation use, and alternative work schedules. The Proponent will work with the Town of Wareham, MassHighway, Southeastern Regional Planning and Economic Development District (SRPEDD), and the Greater Attleboro-Taunton Transit Regional Authority (GATRA) to evaluate the feasibility of providing bus service to the project. The Proponent has also committed to providing financial assistance to GATRA to support the service route expansion. The Proponent will update, refine and expand the TDM program as necessary to accommodate future phases of the project which will be evaluated in subsequent MEPA filings.

*Stormwater:* The Proponent will construct stormwater management systems in compliance with MassDEP stormwater management regulations, which will incorporate Low Impact Development (LID) measures such as vegetated swales and rain gardens. The Proponent will implement erosion and sedimentation controls during construction and a Stormwater Pollution Prevention Plan.

*Wastewater:* The Proponent will construct a Title 5 on-site sewage disposal system with enhanced nitrogen removal for Phase A1 and proposes a municipal sewer connection for Phase A2 (which will result in a reduced nitrogen loading compared with a Title 5 system).

*Agricultural Nitrogen:* The Proponent will implement the nutrient Best Management Practices (BMPs) developed by the University of Massachusetts (UMass) Amherst Cranberry Station.

*Cultural Resources:* The Proponent has retained the Public Archaeological Laboratory (PAL) to conduct archaeological surveys and will continue to coordinate with MHC on cultural resource issues and any mitigation that may be required.

*Greenhouse Gas Emissions:* The Proponent will implement a range of GHG mitigation measures as outlined below, which are estimated to achieve at least a 14 percent reduction in CO<sub>2</sub> for building-related emissions and up to 4.7 percent reduction in CO<sub>2</sub> emissions from transportation-related sources. The Proponent has specifically committed to the following:

- Use high-albedo roofing materials;
- Install high-efficiency HVAC systems;
- Eliminate or reduce use of refrigerants in HVAC systems;
- Maximize interior daylighting;
- Incorporate window glazing, super insulation, motion sensors and lighting and climate control, and efficient directed exterior lighting;

- Use water conserving fixtures that exceed building code requirements;
- Re-use grey water and/or collect and re-use rainwater;
- Provide for storage and collection of recyclables;
- Use building material with recycled content, and those that are extracted and/or manufactured within the region;
- Use wood that is certified in accordance with the Forestry Stewardship Council's principles and criteria;
- Use low-VOC adhesives, paints, carpets and wood;
- Conduct 3<sup>rd</sup> party building commissioning to ensure energy performance;
- Provide construction and design guidelines to facilitate sustainable design build-out by tenants;
- Purchase Energy Star-rated appliances that are the lowest energy rating;
- Use lower GHG-emitting fuels when available (e.g. natural gas instead of fuel oil);
- Engage a Leadership in Energy and Environmental Design (LEED) certified architect to assist in developing an energy-efficient design for Phase A1 and Phase A2; and
- Implement a Transportation Demand Management (TDM) program and transportation improvements as outlined above.

*Sustainable Design:* The Proponent has committed to additional sustainable design features including permanent protection of open space on-site, conservation and restoration of natural areas on-site, and water-efficient landscaping.

### Waiver Request

The Proponent has requested an amended Phase One waiver that will allow the Proponent to proceed with Phase A of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project. As outlined above, the NPC submitted in conjunction with this request identifies the environmental impacts of Phase A and describes measures to be undertaken by the Proponent to avoid, minimize and mitigate project impacts. The Expanded ENF previously submitted includes an assessment of impacts associated with Phase B and a conceptual plan for Phase C, as well as a baseline assessment of environmental resources and infrastructure. The previously-issued Special Review Procedure and Scope for the Phase B EIR remain unchanged by the filing of the NPC and request for Amended Waiver.

### Standards for All Waivers

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.

#### Determinations for a Phase One Waiver

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 One 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 One, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase One;
- (c) 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**
- (d) the agency action(s) on Phase One 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

Based upon the information submitted by the Proponent and after consultation with the state permitting agencies and review of the comments received, I find that the Waiver request has merit and that the Proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to submit a mandatory EIR prior to completion of Phase One of the project would result in an undue hardship for the Proponent **and** would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(4), the latter finding is based on my determination that:

- (a) the potential environmental impacts of Phase One (Phase A), taken alone, are insignificant;

I am satisfied that Phase A can be implemented in a manner that results in insignificant impacts provided that the Proponent complies with the conditions of this Record of Decision, implements the mitigation as proposed in the NPC, and adheres to

the conditions imposed by NHESP and MassHighway, which I expect will be incorporated in their respective permits and Section 61 Findings.

I acknowledge the comment letter from the Coalition for Buzzards Bay (the Coalition) and appreciate the concerns raised regarding nitrogen loading to the Wareham River Estuary. However, the Proponent is proposing to install wastewater systems that will comply with all existing regulatory requirements. In addition, cumulative nitrogen impacts resulting from this and future project phases will be addressed in a draft and final EIR for the project. I have addressed the Coalitions' comments further in the Wastewater and Nitrogen Loading and the Response to Comments sections below.

#### *Endangered Species*

Phase A1, which will be located in the southeast quadrant of the Tihonet Technology Park (TTP) and Phase A3, the proposed cranberry bog expansion, will impact Eastern Box Turtle habitat and require Conservation and Management Permits from NHESP under the Massachusetts Endangered Species Act (MESA). NHESP issued a permit (June 23, 2009) for Phase A1, consistent with the previously-issued FROD, which requires turtle protection during construction and permanent protection of 24 acres of Eastern Box Turtle habitat.

NHESP has agreed to permit Phase A1 and A3 separately from future phases of the project if the amended Phase A waiver is granted. Phase A2 does not require a Conservation and Management Permit. NHESP believes this approach will not reduce its ability to work with the Proponent to address cumulative impacts of the project as a whole on endangered species and their habitats. As noted in its comment letter, this is in part because Phase A work will have little to no impact on globally rare scrub oak barren species, which NHESP indicates will be of greatest concern as a Master Plan for the entire project site is developed. The Proponent has committed to work with NHESP to address cumulative impacts to endangered species on a site-wide basis and minimize habitat fragmentation impacts as part of its master planning process.

#### *Wetlands*

As noted above, the Proponent will provide mitigation for wetlands impacts in accordance with the Wetlands Protection Act and the Town of Wareham Wetlands Protection Bylaw. The Proponent has also committed to implement erosion and sedimentation controls prior to the commencement of construction activities to protect wetlands resources.

*Stormwater*

The Proponent will construct stormwater management systems in compliance with MassDEP stormwater regulations, and incorporate low impact development (LID) features. The Proponent should investigate additional opportunities for LID and incorporate these in Phase A design to the maximum extent feasible. I expect a detailed update on LID techniques incorporated in Phase A as part of the DEIR filing.

*Transportation*

The Proponent has committed to mitigation for transportation impacts as outlined above. The Executive Office of Transportation (EOT) has recommended that no further review of Phase A is required based on transportation issues. As a condition of this Record of Decision, the Proponent should monitor and reevaluate the traffic impacts of the project at the Route 28/Lou Avenue intersection and along the Route 28 corridor in each MEPA filing for subsequent phases of the project. The Proponent should continue consultations with EOT and MassHighway to address further design details and access-related issues during the permitting process for Phase A of the project.

*Wastewater and Nitrogen Loading*

The Wareham River is listed on the Massachusetts Integrated List of Impaired Waters and efforts are underway to develop a Total Maximum Daily Load (TMDL) for nitrogen for the Wareham River Estuary. Future phases of the project that require a Groundwater Discharge Permit from MassDEP will likely be subject to nitrogen offset requirements. However, Phase A does not require a Groundwater Discharge Permit or other MassDEP wastewater permitting. The proposed Phase A wastewater systems are subject to local approval by the Town of Wareham. The proposed Title 5 systems and possible connection to Wareham's municipal wastewater infrastructure are not subject to nitrogen offset requirements.

The NPC proposes a Title 5 system with enhanced nitrogen removal for Phase A1 and a municipal sewer connection for Phase A2 (which will result in a reduced nitrogen loading compared with a Title 5 system). The NPC indicates that if the Town of Wareham is unable to accommodate Phase A2 wastewater flows, a Title 5 system with enhanced nitrogen removal will be constructed on-site, and may be abandoned in the future if connection to the municipal system is feasible.

In its comment letter, the Coalition for Buzzards Bay expresses concern regarding additional nitrogen loading to the Wareham River Estuary and Buzzards Bay, and recommends that I require nitrogen offsets for Phase A and that Phase A should be nitrogen-neutral. Although the Proponent is required to evaluate a nitrogen-neutral

alternative for the entire project in the DEIR, Phase One alone is not subject to any statutory or regulatory requirement to obtain nitrogen offsets unless wastewater permitting is ultimately required by MassDEP. Indeed, although the Scope for the DEIR requires the Proponent to evaluate a nitrogen-neutral alternative, that alternative has not yet been evaluated and nitrogen-neutrality has not been established as a requirement for the project as a whole. Thus, while I appreciate the Coalition's concerns, as discussed further below, I disagree with their contention that there is an established nitrogen offset requirement for each phase of the project. The nitrogen-neutral alternative and proposals for implementing nitrogen offsets will be presented and reviewed in the forthcoming DEIR.

As a condition of this Final Amended Record of Decision, I expect that nitrogen loading impacts and mitigation will be addressed in future filings as required by my previous Certificate on the Expanded ENF. The Proponent should include, in the DEIR, a cumulative analysis of the project's nitrogen impacts (including Phase A), a nitrogen-neutral alternative, and mitigation proposals for all phases of the project. In the meantime, the Proponent should continue to work with the Town of Wareham, MassDEP, and other stakeholders to identify opportunities for the implementation of nitrogen offsets for Phase A prior to the preparation of the DEIR. As recommended by the Buzzards Bay National Estuary Program, the Proponent should work with MassDEP to ensure that the nitrogen loading calculations in the DEIR are consistent with the Massachusetts Estuaries Project nitrogen-loading model.

#### *Greenhouse Gas (GHG) Emissions*

This Phase One Waiver is conditional upon the Proponent's implementation of GHG mitigation measures as outlined in the NPC and in a Memorandum from the Proponent dated September 24, 2009. The Proponent's mitigation commitments include a range of site design, transportation and building-related measures that are estimated to reduce Phase A Carbon dioxide (CO<sub>2</sub>) emissions by at least 14 percent for building-related emissions and 0 to 4.7 percent for indirect transportation emissions (an estimated 3 to 6 percent overall reduction for Phase A direct and indirect GHG emissions combined).

Upon completion of construction of Phase A, the Proponent should provide a certification to the MEPA Office signed by an appropriate professional (e.g. engineer, architect, general contractor) indicating that all of the GHG mitigation measures, or equivalent measures that are designed to collectively achieve the 14 percent stationary source GHG emission reduction committed to in the NPC, have been incorporated into the project. The certification should be supported by as-built plans. For those measures that are operational in nature (i.e. TDM, recycling, use of Energy Star-rated equipment), the Proponent should provide an updated plan identifying the measures, the schedule for implementation and how progress toward implementing these measures will be achieved.

EOT/MassHighway should incorporate this self-certification requirement into its Section 61 Finding for the Phase A portion of the project.

The DEIR should include a progress report on the implementation of GHG mitigation measures for Phase A. I note that the Certificate on the Expanded ENF requires that the DEIR include a cumulative impact analysis of GHG emissions for all phases of the proposed project.

(b) ample and unconstrained infrastructure facilities and services exist to support Phase One;

Phase A is located in areas of the project site that are accessible to existing transportation and water supply infrastructure. As noted above, the Proponent has committed to transportation improvements and a TDM program. The Wareham Fire District notes in its comment letter that it has sufficient capacity to meet the estimated water supply demand for the development as outlined in the NPC. As noted above, the Proponent will construct an on-site Title 5 system with enhanced nitrogen removal to manage Phase A1 wastewater flows and proposes a connection to existing municipal sewer infrastructure for Phase A2 (or a Title 5 system if the municipal connection is not feasible).

(c) 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;

Phase A represents a discreet portion of the overall project and does not depend on implementation of any future phase. Given the nature and extent of the entire project site, the scope and location of Phase A, and the provisions of the SRP, I am satisfied that Phase A will not restrict the means by which impacts from any other phase of the project may be avoided, minimized or mitigated.

and

(d) the agency action(s) on Phase One 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.

I expect that state agencies will incorporate appropriate conditions and mitigation requirements in their respective permits and Section 61 Findings to reflect the conditions of this Final Amended Record of Decision and to ensure due compliance with MEPA

prior to commencement of any other phase of the project. State agencies should forward copies of final Section 61 Findings to the MEPA Office for the project record.

### Response to Comments

The Coalition for Buzzards Bay, in its comment letter, argues that the project is not severable unless nitrogen offsets are implemented as part of Phase A because the project would require future phases in order to be nitrogen-neutral. However, no such requirement has been established. In my previously-approved FROD, I directed the Proponent to work with stakeholders to identify opportunities for nitrogen offsets prior to filing a Draft EIR. As part of the Scope for the DEIR, I required a cumulative analysis of nitrogen impacts from all phases and an evaluation of a nitrogen-neutral alternative for the project overall. While the entire project, or future phases that require a MassDEP permit, may be subject to a requirement to obtain nitrogen offsets, no such requirements have been established at this stage in the MEPA process for portions of the project that require local approvals. As noted above, Phase One alone is not subject to any statutory or regulatory requirement to be nitrogen-neutral.

The Coalition's letter also indicates that granting a waiver as proposed in the Draft Amended Record of Decision (DAROD) violates state surface water quality policies because Phase A nitrogen discharges would contribute to the impairment of the Wareham River unless completely offset, and that a Title 5 permit is a state agency action under MEPA. The proposed Title 5 system is under the jurisdiction of the local Board of Health and the proposed connection and discharge to the Wareham Water Pollution Control Facility appears to only require local approval from the Town of Wareham. This is not a state Permit for purposes of MEPA. There is no MassDEP Permit required, and no other source of regulatory requirement for nitrogen neutrality. Therefore, I am not imposing nitrogen offset requirements for Phase A as a condition of this Final Amended Record of Decision. As noted above, it is likely that nitrogen offsets will be required for any future phases of the project that require a MassDEP Permit.

Although I disagree with the Coalition on a number of points, I do appreciate its comments and concern regarding any additional degradation of the Wareham River and I support ongoing efforts to develop a TMDL for the Wareham River Estuary and improve water quality in the estuary and in Buzzards Bay. I ask that the Proponent continue to devote its best efforts to minimizing the nitrogen contribution of Phase A and to identifying any feasible voluntary offsets.

### Conclusion

I have determined that this waiver request has merit and I issued a Draft Amended Record of Decision, which was published in the October 7, 2009 edition of the *Environmental Monitor*. The public comment period lasted 14 days and ended on October 21, 2009. Based on review of the NPC and waiver request, as well as consultation with state agencies and consideration of the

comments received, I hereby **grant** the waiver requested for this project, which will allow the Proponent to proceed with Phase A of the project prior to preparing a mandatory EIR for the entire project, subject to the above findings and conditions. This Final Amended Record of Decision will be published in the November 9, 2009 edition of the *Environmental Monitor*.

October 28, 2009

Date



Ian A. Bowles, Secretary

#### Comments Received on the Draft Amended Record of Decision

10/21/09 The Coalition for Buzzards Bay

#### Comments Received on the NPC

7/25/09 Massachusetts Historical Commission  
8/05/09 Wareham Fire District  
8/06/09 Division of Marine Fisheries  
8/31/09 Southcoast Hospital Group  
9/02/09 Cape Cod Cranberry Growers' Association  
9/03/09 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program  
9/04/09 The Wareham Land Trust  
9/04/09 Wareham Ford, Inc.  
9/04/09 Office of Coastal Zone Management, Buzzards Bay National Estuary Program  
9/04/09 The Coalition for Buzzards Bay  
9/08/09 Oliver Durrell III  
9/08/09 Town of Wareham, Board of Selectmen  
9/08/09 Massachusetts Department of Environmental Protection  
9/08/09 Southeastern Regional Planning & Economic Development District  
9/08/09 Town of Wareham, Community and Economic Development Authority  
9/09/09 Executive Office of Transportation and Public Works (EOT)  
9/24/09 EOT (additional email correspondence)

IAB/AE/ae