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September 12, 2008

DRAFT RECORD OF DECISION

PROJECT NAME : ADM Tihonet Mixed Use Development  
PROJECT MUNICIPALITY : Carver, Plymouth and Wareham  
PROJECT WATERSHED : Buzzards Bay  
EOEEA NUMBER : 13940A  
PROJECT PROPONENT : ADM Development Services LLC  
DATE NOTICED IN MONITOR : July 23, 2008

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 (ENF) and hereby **propose to 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 project entails development of a 6,074-acre site in the towns of Wareham, Carver and Plymouth. The project 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 ENF 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.

The proponent has requested that I allow Phase A of the project to proceed to state permitting prior to completion of an EIR for the entire project. Phase A (which includes A1 and A2) is located within the Town of Wareham. The proposed development program for Phase A has changed since the Certificate on the Special Review Procedure was issued on January 29, 2007. Phase A1 has been reduced from 150,000 square feet (sf) to 115,000 sf of office and light manufacturing space, and its location has changed from the northwestern to the southeastern quadrant (approximately 18.4 acres) of the 60-acre Tihonet Technology Park. In addition, a 40,000 sf medical office building is proposed as Phase A2 on a six-acre parcel located on Lou Avenue off Route 28.

Phase B, which is also located in the Town of Wareham, consists of development of a 1,140-acre portion of the site. The conceptual plan for Phase B entails construction of approximately 1.7 millions sf of development to include retail, manufacturing, warehouse, light industry, office, medical office, research and development uses, and a hotel.

The Expanded ENF includes a conceptual plan for Phase C, which includes the remaining portions of the project site (approximately 4,910 acres) in the towns of Carver, Plymouth and Wareham. The conceptual plan is based on current zoning that would allow development of 1,366 single-family homes, 380 condominiums, and 110 apartments. As discussed in the Expanded ENF, the proponent is working with the surrounding communities to implement TDR and other innovative zoning tools. The Phase C development plan will likely include agricultural, mixed-use residential, village-scale retail, with the remainder to be held as conservation land.

### Special Review Procedure

In accordance with the Special Review Procedure (SRP) dated January 29, 2007, the proponent has filed an Expanded ENF that includes 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, I have issued a Scope for the EIR for Phase B (the Business Development Overlay and General Commercial District) which is included in the Certificate on Expanded ENF, dated September 12, 2008. 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.

The Expanded ENF included a request to amend the SRP to reflect the proposed change in Phase A. I am satisfied that an amendment to the SRP is not necessary. The proposed change is documented in the Expanded ENF, in the Certificate on the Expanded ENF, and in this Draft Record of Decision (DROD). Furthermore, the proposed Phase A change does not affect the review process and future filing requirements detailed in the SRP.

MEPA Jurisdiction

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)).

Phase B 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. Phases A and B may be subject to federal consistency review by the Massachusetts Office of Coastal Zone Management (CZM). The project is subject to review by the Massachusetts Historical Commission (MHC). The project is also subject to the Executive Office of Energy and Environmental Affairs (EEA)/MEPA Greenhouse Gas Emissions Policy and Protocol. 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 permits and exceeds MEPA review thresholds, including several thresholds for a mandatory EIR. The project is undergoing review pursuant to: 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 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 Expanded ENF indicates that the proponent may apply for financial assistance from the Commonwealth, including grants from the Massachusetts Technology Collaborative and the Massachusetts Opportunity Relocation and Expansion (MORE) Program. If the project involves financial assistance from the Commonwealth, MEPA jurisdiction will be broad and extend to all aspects of the project likely to cause damage to the environment as defined in the MEPA regulations. In the absence of financial assistance, MEPA jurisdiction would extend to aspects of the project within the subject matter of required state permits that are likely to cause damage to the environment as defined in the MEPA regulations. In this case, MEPA jurisdiction would

extend to water supply, wastewater, wetlands, water quality, rare species, historical and archaeological resources, transportation, land and stormwater.

### Summary of Potential Environmental Impacts

The proposed Phase A involves alteration of approximately 20 acres of land and creation of 11 acres of new impervious area. Phase A is expected to generate approximately 2,250 vehicle trips on an average weekday and includes 577 parking spaces. Water use and wastewater generation is estimated in the Expanded ENF at approximately 8,000 gallons per day. The Phase A1 project site includes priority habitat for state-listed species and Phase A will most likely result in a "take". The Expanded ENF proposes an on-site Title 5 septic system for Phase A1 with enhanced nitrogen removal. The preferred alternative for Phase A2 is a municipal sewer tie-in. However, if this is not feasible, a Title 5 system with enhanced nitrogen removal is proposed. Potable water supply for Phase A will be provided by the Wareham Fire District.

Phase B will result in alteration of approximately 130 acres of land, including 80 acres of new impervious area. Wetlands impacts include 3,000 square feet of Bordering Vegetated Wetlands (BVW) alteration on-site and an additional 0.3 - 1 acre of alteration associated with off-site roadway improvements. Phase B will also impact 5,800 sf of other wetlands including Bordering Land Subject to Flooding (BLSF) on-site and 1 to 2 acres of BLSF off-site as a result on proposed roadway improvements. Phase B may also impact Riverfront Area. Phase B is expected to generate 17,854 trips on an average weekday and includes 4,000 parking spaces. The Expanded ENF proposes that a portion of the Phase B wastewater (32,000 gallons per day (gpd)) be discharged to the municipal sewer system and the remainder (89,000 gpd) be collected, treated and disposed on-site through one or more wastewater treatment facilities. The average water demand for Phase B is estimated in the Expanded ENF at 66,000 gpd and will be provided by the Wareham Fire District. Impacts associated with Phase C will be detailed in future MEPA filings.

### Summary of Proposed Mitigation Measures

#### *Rare Species:*

The Expanded ENF did not include specific mitigation measures for Phase A and concluded that a "take" is unlikely. However, NHESP disagrees with this conclusion. The proponent has agreed to submit a Conservation and Management Permit application and will be required to implement appropriate mitigation for Phase A. NHESP indicates that the initial habitat assessment included in the Expanded ENF provides useful information that will be used to develop an appropriate mitigation plan.

#### *Transportation:*

The Expanded ENF evaluated traffic impacts of Phase A on nearby transportation infrastructure and the impacts of projects currently proposed or underway within the study area.

As noted in the EOT comment letter, improvements proposed for the Wareham Crossing project (EEA# 13274) are expected to provide sufficient capacity to accommodate the impacts of Phase A. The proponent has also proposed additional mitigation measures along the Route 28 corridor that include traffic signal optimization, minor geometric improvements, pavement markings and sign upgrades at the Route 28/Lou Avenue intersection, and a monitoring program at the Route 28/Tihonet Road intersection to determine whether a signal is warranted. The proponent is committed to install the signal if warranted. The proponent has also committed to Transportation Demand Measures (TDM) for Phase A.

### *Greenhouse Gas Emissions*

I commend the proponent for selecting a Leadership in Energy and Environmental Design (LEED) certified architect to assist in the development of an energy efficient design for Phase A. Based on the Expanded ENF, the proposed mitigation measures for Phase A1 are expected to result in a five percent to eight percent reduction in CO<sub>2</sub> emissions. The proposed mitigation measures for Phase A2 are expected to reduce emissions by 8 percent to 12 percent. The proponent has committed to a range of mitigation measures including high-efficiency heating, ventilation and air conditioning (HVAC) systems, super insulation, and third party building commissioning to ensure energy performance. Transportation measures include roadway improvements and bicycle facilities. Building-related emission reduction measures contribute to a greater part of the overall reductions expected compared to transportation measures. The Expanded ENF indicates a 52 percent reduction in CO<sub>2</sub> emissions for Phase 2 building-related emissions and a 17 percent reduction for Phase A1 based on the mitigation proposed. During Expanded ENF review, the proponent made clear commitments in a letter dated September 9, 2008, to implement all of the mitigation measures identified in the Expanded ENF as part of Phase A1 and Phase A2, with the exception of grey water re-use. The proponent will consider the re-use of grey water for future project phases.

### *Stormwater and Low Impact Development (LID)*

The proponent will construct a stormwater management system in compliance with MassDEP stormwater management regulations, which will incorporate LID measures. The Expanded ENF indicates that the proponent is investigating LID measures such as vegetated swales and rain gardens. The proponent will implement erosion and sedimentation controls and a Stormwater Pollution Prevention Plan for Phase A.

### *Wastewater*

Phase A1 will include a Title 5 on-site sewage disposal system with enhanced nitrogen removal. The proponent's preferred alternative for Phase A2 is to connect with the Town of Wareham municipal sewer system if feasible, which would result in a reduced nitrogen loading compared with a Title 5 system. If a municipal sewer connection is not feasible, Phase A2 wastewater will be discharged to an on-site Title 5 system with enhanced nitrogen removal.

### Waiver Request

The proponent has requested a waiver that will allow the proponent to proceed with Phase One (Phase A) of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project. An Expanded ENF was submitted in conjunction with this request that identifies the environmental impacts of Phase A and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts. The Expanded ENF also 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.

### 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, 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 Certificate, implements the mitigation as proposed in the Expanded ENF, and adheres to the conditions imposed by NHESP and EOT, which I expect will be incorporated in their respective permits and Section 61 Findings.

The Expanded ENF proposes development of Phase A1 in the southeast quadrant of the Tihonet Technology Park but requested that I grant the proponent flexibility to change the development location to another quadrant within the 60-acre Tihonet Technology Park. The Expanded ENF indicates that no wetlands alteration will occur as part of Phase A1 and that it uses a disturbed portion of the site. The proponent is in consultation with NHESP and will be filing an application for a Conservation and Management Permit. The proponent should develop and implement Phase A mitigation measures for state-listed species as required by NHESP.

The alternatives analysis indicates that development of Phase A1 in other quadrants may impact riverfront area and result in more land alteration compared with the preferred alternative. Potential impacts associated with development in other quadrants have not been fully described in the Expanded ENF. As a condition of this proposed Phase One Waiver, I will allow Phase A1 to proceed to state permitting for Phase A1 development in the southeast quadrant of the site. However, I will require submission of a Notice of Project Change if the proponent chooses to develop Phase A1 on another part of the site.

### *Wastewater and Nitrogen Loading*

According to the Expanded ENF, Phase A of the project does not require state agency permits for wastewater discharge. The Expanded ENF proposes a Title 5 system with enhanced nitrogen removal for Phase A1. However, MassDEP requires additional

information, including details of future property ownership at the Tihonet Technology Park, to determine if the proponent will be required to file an application for a Groundwater Discharge Permit for Phase A1. The proponent may be required to abandon the proposed Title 5 system in the future and direct Phase A1 wastewater to a treatment facility, if such a facility is constructed for a future development phase. In addition, I received several comments regarding management of potential industrial and medical wastes from Phase A. I note MassDEP's comment that discharging industrial wastewater (or medical wastewater, if applicable) to an on-site sanitary system is prohibited.

The proponent should consult with MassDEP, prior to the close of comments on this DROD, to clarify Phase A permit requirements. The proponent should also consult with the Town of Wareham regarding applicable local regulations and permit requirements. The proponent should submit a letter to the MEPA Office with an update on consultations, including any change in permit requirements, prior to the close of comments on this DROD.

I have received several comment letters highlighting concerns about nitrogen loading in the Buzzards Bay watershed and the need for mitigation. As detailed in the Certificate on the Expanded ENF, the proponent will be required to include a cumulative analysis of the project's nitrogen impacts (including Phase A impacts) and present mitigation proposals for all phases in a Draft EIR. In the meantime, the proponent should continue to work with MassDEP, the Town of Wareham, and other stakeholders to identify opportunities for nitrogen offsets for Phase A.

The proponent's preferred wastewater alternative for Phase A2 is to connect with the municipal system. If this is not feasible, a Title 5 system with enhanced nitrogen removal is proposed. As a condition of this proposed Phase One Waiver, the proponent should fully explore the feasibility of directing Phase A2 wastewater to the Town of Wareham Wastewater Treatment Facility through a rehabilitated or new sewer line. I note MassDEP's comments regarding the consistency of this approach with the Town of Wareham's Comprehensive Wastewater Management Plan (CWMP, EEA# 12562). The proponent should consult with MassDEP and the MEPA Office regarding the possible requirement for a Notice of Project Change (NPC) for the CWMP and any additional evaluations that may be required if a municipal tie-in for Phase A2 wastewater is proposed.

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

This proposed Phase One Waiver is conditional upon the proponent's implementation of GHG mitigation measures as outlined in a commitment letter from the proponent, dated September 9, 2008. These include a range of site design, transportation and building-related measures that are expected to reduce carbon dioxide (CO<sub>2</sub>)

emissions by 5 to 8 percent overall for Phase A. 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;

The Wareham Fire District will provide potable water supply for Phase A. A Title 5 system will be constructed to manage wastewater discharges from Phase A1. If municipal sewer connection is not feasible for Phase A2, a Title 5 system will be constructed for Phase A2 also.

The proponent will construct a stormwater management system 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.

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. In its comment letter, EOT generally concurs that the proposed mitigation measures will mitigate the impacts of the project as proposed. The proponent should provide EOT with a letter of commitment to implement the proposed mitigation measures, which will serve as the basis for MassHighway to issue a Section 61 Finding for Phase A of the project.

(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 is located in areas of the project site that are accessible to existing transportation and water supply infrastructure. On-site Title 5 systems are proposed to manage Phase One wastewater flows (or a possible connection to existing municipal sewer infrastructure for Phase A2). Phase One 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. I note that cumulative impacts associated with Phase A and any other project phases will be addressed in future MEPA filings.

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 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.

### Conclusion

I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on September 24, 2008 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on October 8, 2008. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

I hereby **propose to grant** the waiver requested for this project, which 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, subject to the above findings, and conditions.

September 12, 2008

Date

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Ian A. Bowles, Secretary

## Comments Received:

8/01/08 Wareham Fire District  
8/13/08 Massachusetts Historical Commission  
8/28/08 Town of Plymouth  
8/29/08 Cape Cod Canal Region Chamber of Commerce  
8/29/08 Wareham Ford  
9/04/08 Plymouth/Carver Aquifer Advisory Committee  
9/04/08 Carver Conservation Commission  
9/04/08 Division of Marine Fisheries  
9/04/08 E.L. Morse Co., Inc.  
9/04/08 Plymouth Area Chamber of Commerce  
9/05/08 Town of Wareham  
9/05/08 Cape Cod Cranberry Growers' Association  
9/05/08 David Beluche  
9/05/08 Department of Environmental Protection, Southeast Regional Office  
9/05/08 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species  
Program  
9/05/08 Buzzards Bay National Estuary Program  
9/05/08 The Nature Conservancy  
9/05/08 The Coalition for Buzzards Bay  
9/05/08 Southeastern Regional Planning and Economic Development District  
9/08/08 Office of Coastal Zone Management  
9/08/08 Plymouth Area Chamber of Commerce  
9/10/08 Old Colony Planning Council  
9/10/08 Executive Office of Transportation

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