



# CAPE COD COMMISSION

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Date: January 10, 2002

Applicant: Mashpee Conservation Commission  
PO Box 208  
Mashpee, MA 02649

Project #: JD # 20045

Project: New Seabury Properties - MEPA review  
Mashpee, MA 02649

RE: Development of Regional Impact Jurisdictional Determination  
Cape Cod Commission Act, Section 12 (j)

Land Court Certificate Numbers: 149477; Condo Certificate # 271, Units 7001-7043; 149477, 149457, 149470, 144060 (Map 123, parcel 192), 149458, 143485, Registry Book 11588, Page 106 (Map 127-17 only); Book 7703, Page 72; all remaining properties included in MEPA filing SFEIR # 12074.

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY:

Pursuant to Section 12 (j) of the Cape Cod Commission Act, the Cape Cod Commission (Commission) hereby determines that the proposed New Seabury Properties development (Project) located in seven parcels within New Seabury in the Great Neck area of Mashpee, MA, and described in a Supplemental Final Environmental Impact Report (SFEIR, EOEA #12074) dated October, 2001, is a project that qualifies for review as a Development of Regional Impact under Section 3 of the DRI Enabling Regulations Barnstable County Ordinance 90-12 as amended, and which is not exempt under Section 22 of the Cape Cod Commission Act (Act), c.716 of the Acts of 1989 as amended. This decision is rendered pursuant to a vote of the Commission on January 10, 2002.

### PROJECT DESCRIPTION:

The New Seabury Properties proposed Project includes development on seven parcels of land throughout the New Seabury golf and resort complex on Great Neck in Mashpee, MA, as described in the SFEIR dated October 2001. The Project includes:



- Completion of SeaQuarters Condominium – 50 units;
- Completion of the Promontory Point Condominium – 24 units;
- Development of Flat Pond Subdivision – 30 single family homes;
- Development of Spinnaker Cove – 8 single-family homes;
- Redevelopment of Popponesset Inn and associated recreation facilities – refurbishment of the Popponesset Inn (restaurant), new swimming pool, new cabana club, 9-unit townhouse village on the waterfront, 12 townhouses, 30 condominium units and parking;
- Completion of Bluff Lots – 5 single family homes;
- Condominium around the Popponesset Inn – 52 units;
- Poppy Place – 14 single family lots;
- Condominiums around the golf course clubhouse – 87 units;
- New golf course maintenance facility; upgrading golf course (this has been completed)
- Mixed-use development in Section 5 including 37 single family detached homes, 38 single family attached units, hotel up to 150 rooms, 80,000 sf of commercial and retail space, 200 garden apartments, new reception center, new recreation complex including a golf practice range, a fitness center and 50-seat café, pool and tennis courts, all with associated parking and roads;
- Construction of a 300,000 gallon per day (gpd) wastewater treatment facility (WWTF) to service new development, the new clubhouse and the reconstruction of Popponesset Inn. The WWTF has been completed and permitted for 100,000 gpd.

### **Procedural History:**

New Seabury Properties' (NSP) plans were submitted to Executive Office of Environmental Affairs, MEPA Unit, in a Draft Environmental Impact Report (DEIR) dated October 2000.

The Commission received a request for a Jurisdictional Determination (JD) from the Mashpee Conservation Commission on January 22, 2001. The Commission determined that NSP's application was complete on February 7, 2001. The Mashpee Conservation Commission and NSP agreed to extensions of the Commission's JD review period several times, first to March 30, 2001, then April 30, 2001, and then May 25, 2001. The review period had a final extension until Feb. 28, 2002, so NSP could complete the MEPA process. A duly noticed public hearing pursuant to Section 5 of the Cape Cod Commission Act was held by an authorized subcommittee on May 15, 2001 at the Mashpee Town Hall, Mashpee, MA, to receive public comment concerning the proposed development outlined by NSP in their Final Environmental Impact Report (FEIR) filed with MEPA on April 13, 2001. The Secretary of Environmental Affairs required additional information to address environmental impacts and protections in a SFEIR. The SFEIR was filed on Oct. 24, 2001, and received the Secretary's Certificate on Nov. 30, 2001. A Subcommittee of the Commission held a public meeting on January 2, 2002 for an update on changes to the project that were reflected in the SFEIR. The full Commission held a public hearing on January 10, 2002 at 3:00 pm in the Assembly of Delegates Chamber in Barnstable Village. At the conclusion of this hearing, the Commission voted unanimously that the proposed project qualifies for review as a Development of Regional Impact under Section 3 of the DRI Enabling Regulations, and is not exempt under Section 22 of the Act.

***Materials Submitted for the Record by the Applicant:***

- Comment letter on SFEIR from Mashpee Conservation Commission – Nov. 23, 2001
- Fax from Division of Fisheries & Wildlife – Aug. 28, 2001
- Rare Animal Observation Form from Natural Heritage & Endangered Species Program – Aug. 21, 2001
- Comment letter on FEIR – March 28, 2001
- 30 day Extension Agreement to May 25, 2001 from Mashpee Conservation Commission
- Letter from the Mashpee Conservation Commission – May 15, 2001
- Extension Agreement to Feb. 28, 2002 for JD review – May 10, 2001
- Extension Agreement to May 25, 2001 – March 28, 2001
- Extension Agreement to April 30, 2001– March 15, 2001
- Extension Agreement to March 30, 2001 – Feb. 20, 2001
- Letter from Diane Boretos, Mashpee Conservation Commission dated Feb. 1, 2001
- Plan of Land in Mashpee by G.F. Clements, dated March 1926
- Application for Jurisdictional Determination and locus map from R. Sherman, Mashpee Conservation Commission - Dec. 21, 2000
- Letter from D. Boretos, Assistant Conservation Agent, certifying the filing of the JD Application - Dec. 20, 2000
- Comment letter on DEIR – Nov. 17, 2000
- Explanation prepared for Jan. 29, 1990 town meeting article
- Letter from EOE, DEM to Town of Mashpee, dated May 26, 1995
- Copy of Agreement with Mashpee Selectboard, dated May 22, 1995
- Letter of Determination filed by the Town of Mashpee Board of Appeals – May 1994
- Opinion from Elizabeth Lane, dated July 15, 1994
- Letter from Mark C. Gildea, Attorney, to Town of Mashpee Planning Board dated May 5, 1993
- Opinion from Myron J. Fox, Attorney for New Seabury, to the Town of Mashpee Planning Board, dated June 14, 1993
- Opinion from Elizabeth A. Lane, Attorney, to the Town of Mashpee Planning Board, dated June 1, 1993
- Status update on New Seabury development of special permit area from Michael H. Grotzke, Engineer for New Seabury, to town of Mashpee Planning Board, dated July 9, 1991
- Letter of Determination from Mashpee Board of Appeals, dated Dec. 3, 1990
- Mass. Appeals Court decision (New Seabury Corp. v. Board of Appeals of Mashpee, et al, 28 Mass. App. Ct. 946 (1990))
- Town Meeting Article 9 from Jan. 29, 1990
- Deed from Forward Development Co. – July 29, 1988
- Opinion from John Reardon, Mashpee Town Council – Jan. 23, 1980
- MA Superior Court (Equity No. 32799) *New Seabury v. Mashpee Board of Appeals*, Findings and Conclusions, dated Nov. 4, 1975
- Letter from Richard Staff, town counsel, to Building Inspector – Dec. 15, 1972
- Town Meeting Article 15 from Dec. 15, 1971
- Article 18, 1966 Town Meeting
- “Deed of Restrictions” from Popponesset Corporation to the Town of Mashpee, dated July 13, 1964

- Declaration written by Emil Hanslin of easements, covenants, restrictions, agreements and charges affecting Greensward East of New Seabury, dated May 7, 1964, pages 1 – 10
- Article 37 from March 2, 1964 Town Meeting
- Cluster Zoning Bylaw, 1964
- “Facts and Decision” from Mashpee Board of Appeals, dated Feb. 24, 1964
- Jan. 1964 “Cluster Zoning Plan of a Portion of New Seabury, Mashpee, MA, by George E. Hayes”, dated Jan. 1, 1964
- “Facts about the Mashpee Cluster Zoning District Bylaw versus the Proposed Zoning Bylaw Changes” – undated, but prior to 1963 adoption of cluster bylaw
- Article 61 for 1963 town meeting
- 1963 Zoning Bylaws
- Copy of 1962 Zoning regulations, and more recent revisions to zoning regulations
- 1961 Chapter III – Article II of the Zoning By-laws

***Materials submitted by MEPA:***

- Secretary’s Certificate on SFEIR – Nov. 30, 2001
- Copy of fax from Robert Brennan, assistant to R.J. Lyman of Goodwin Procter LLP, to MEPA office dated Nov. 28, 2001 – Dec. 10, 2001
- Secretary’s Certificate on FEIR – April 13, 2001
- Secretary’s Certificate on DEIR – Dec. 15, 2000
- Secretary’s Certificate on the ENF – Jan. 28, 2000

***Materials submitted by other Town Officials:***

- Memorandum from William Henchey, attorney for the Mashpee Water District, and the Mashpee Water District – Jan. 10, 2002
- Letter from the Mashpee Board of Health – Jan. 8, 2002
- Letter from the Mashpee Planning Board – Jan. 7, 2002
- Fax from Mashpee Conservation Commission containing DPW license #2261 for the bridge at Spinnaker Cove
- Comments on SFEIR from SEA Consultants representing the Mashpee Water District – Nov. 23, 2001
- Letter from William Henchey representing the Mashpee Water District – May 15, 2001
- Comments on FEIR from Mashpee Water District – April 12, 2001
- Letter from the Mashpee Planning Board – April 9, 2001
- Comments on FEIR from Horsley & Witten on behalf of the Peninsula Council – April 3, 2001
- Fax from Town Planner – Jan. 18, 2001
- Comments on DEIR from William Henchey representing Mashpee Water District – Dec. 8, 2000

***Materials submitted by New Seabury:***

- Letter and materials from R.J. Lyman, of Goodwin Procter LLP – Jan. 10, 2002
- SFEIR – Oct. 26, 2001
- Letter from Robert Brennan, Goodwin & Procter – Aug. 30, 2001
- Extension Agreement from Fasanella & Wood to Feb. 28, 2002 for JD – May 15, 2001
- Extension Agreement from Fasanella & Wood to May 25, 2001 for JD – April 23, 2001

- Extension Agreement from Fasanella & Wood to April 30, 2001 for JD – March 16, 2001
- FEIR – March 7, 2001
- Extension Agreement from Fasanella & Wood to March 30, 2001 for JD– Feb. 22, 2001
- Fax from Glenn Wood, Fasanella & Wood – Jan. 5, 2001
- DEIR – Oct. 23, 2000
- ENF for MEPA (EOEA #12074) – Nov. 1999

***Materials submitted by interested parties:***

- Email from Tom Moccia, The Moccia Group – Jan. 14, 2002
- Mashpee Enterprise article – Jan. 11, 2002
- Letter from the Association for the Protection of Cape Cod – Jan. 10, 2002
- Letter from Mr. James Whalen – Jan. 10, 2002
- Letter from Jane Coogan – Nov. 20, 2001
- Comments on SFEIR from Massachusetts Historical Commission – Nov. 19, 2001
- Letter from Alice Liebman - Nov. 13, 2001
- Letter from Ruth Vignati – Nov. 5, 2001
- Letter from Steven Croopnick – Nov. 3, 2001
- Letter from Laurence and Arlene Wolk – Oct. 30, 2001
- Letter from Edward Modest – Sept. 17, 2001
- Email from George Wexniak – July 10, 2001
- Letter from Eric Sharton – July 1, 2001
- Cape Cod Times article – May 17, 2001
- Letter from Massachusetts Historical Commission – May 15, 2001
- Boston Sunday Globe article – May 13, 2001
- Comments on FEIR from Sharon Pelosi – April 6, 2001
- Letter from Martin S. and Ellen M. Gordon – April 6, 2001
- Letter from Elisabeth Golub to MEPA – April 6, 2001
- Comments on FEIR from Massachusetts Historical Commission – April 5, 2001
- Comment letter on FEIR from Tom Skinner, Coastal Zone Management – April 3, 2001
- Letter from Jane Coogan – March 21, 2001
- Letter from Barbara Adner – March 18, 2001
- Letter from Keith Bernard – March 12, 2001
- Letter from Peninsula Council – Feb. 28, 2001
- Letter from David F. Foley – Feb. 22, 2001
- Letter from Daniel J. Candura – Feb. 22, 2001
- Copy of a Peninsula Council mailing to members – Feb. 22, 2001
- Comments on DEIR from Horsley & Witten, on behalf of the Peninsula Council – Feb. 21, 2000
- Letter from Cheong Kim – Feb. 21, 2001
- Letter from Rosemary Burns – Feb. 20, 2001
- Letter from Harry N. Wessel – Feb. 14, 2001
- Letter from James T. Whalen – Feb. 13, 2001
- Email from Deith Bernard – Jan. 12, 2001
- Comments on DEIR from Tom Skinner, Coastal Zone Management – Dec. 15, 2000
- Letter from Jane Coogan – Dec. 15, 2000

- Fax from Jane Coogan – Dec, 2000
- Letter from Jane Coogan – Dec. 6, 2000
- Fax from Rebecca O'Donnell – Dec. 4, 2000
- Enterprise article – Oct. 27, 2000

***From the Cape Cod Commission:***

- Hearing notice for Jan. 10, 2002 public hearing
- Hearing notice for hearing officer for Aug. 31, 2001 hearing
- Hearing notice for May 15, 2001 public hearing
- Notice postponing March 22, 2001 public hearing - March 19, 2001
- Hearing notice for March 22, 2001 public hearing
- Hearing notice for Feb. 22, 2001 public hearing
- Fax from M.Twombly to Mashpee Town Clerk – Jan. 22, 2002
- Comments on SFEIR - Nov, 21, 2001
- Hearing officer continued hearing Aug. 31, 2001
- Comments on the FEIR – April 5, 2001
- Hearing officer opened and continued hearing to May 15, 2001 – March 23, 2001
- Memo to all parties that the March 22, 2001 hearing is rescheduled for April 24, 2001 – March 16, 2001
- Hearing officer continued hearing to March 22, 2001 – March 6, 2001
- Notice that the Feb. 22, 2001 hearing is procedural only – Feb. 21, 2001
- Memo to all parties that Feb. 22, 2001 hearing has been rescheduled to March 22, 2001 – Feb. 16, 2001
- Fax to Mashpee Conservation Commission, that JD application is complete – Feb. 9, 2001
- Memo to Subcommittee from M. Twombly - February 7, 2001
- Letter from Mashpee Conservation Commission – January 3, 2001
- Letter to Mashpee Conservation Commission – Dec. 28, 2000
- Comment letter on DEIR – Nov. 22, 2000

The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of meetings and hearings, the Jurisdictional Determination JD/ TR 90097, and all written submissions received in the course of our proceedings are incorporated into the record by reference.

**TESTIMONY:**

The following testimony was received at public hearings:

Public hearing # 1 - May 23, 2001:

M. Twombly, Planner, explained that the twofold purpose of the hearing was to give an update of the MEPA and JD processes taking place simultaneously, and for the Subcommittee to receive comments from the public.

Glenn Wood, representing New Seabury, discussed areas of concern by commenters in the MEPA process, acknowledged the extension of time agreed to by the Mashpee Conservation Commission for jurisdictional review of this project until after the SFEIR is concluded, and voiced his client's desire to address all the concerns that have been raised in this supplemental report.

Mr. Carr, project engineer from Earth Tech, described each of the seven development areas as represented in the 1964 Special Permit. He stated that because all of the development will be connected to the WWTF, nitrogen loading within the Zone II will be reduced. Mr. Carr pointed out the major new development planned for Section 5, where two town wells are located, has raised the most concerns. Mr. Carr noted that commercial space is actually less than would be allowed under the Special Permit.

G. Belfit, hydrologist with Commission staff, presented concerns about water quality in Section 5 where the density of development and use places the Town's wells at great risk from removing forest cover, risks of pollution from stormwater, pesticide and fertilizer runoff, and potential breaks in sewer lines.

Diane Boretos, Assistant Conservation Agent for the Mashpee Conservation Commission, discussed concerns about development on filled tidelands in the Spinnaker Cove area, wetland issues and vernal pools throughout the project, and on eroding coastal banks in the Tidewatch area and wildlife habitat issues.

Public testimony included:

George Shapps was concerned about the level of building proposed around the Beach & Cabana Club near the Popponesset Inn. He said it was already very crowded, there was very little parking.

LM Green voiced concerns about over-crowding at "Sandy Beach" and questioned whether residents would have difficulty accessing the beach area.

Dave Foley stated that the original crafters of the plan in 1964 had protected the wells with low density in Section 5.

Betsy Golub, New Seabury resident; Maggie Geist, representing the 5000 member Association for the Protection of Cape Cod; and Andy McGarrity, school teacher and New Seabury resident, all spoke in support of the Commission taking jurisdiction of the development.

Ruth Maney, President of Peninsula Council and resident of New Seabury, wants to insure that the water quality is protected.

Jeff Oppenheim, Attorney, represents 7 homeowners in Seaside area of New Seabury. They support the Commission finding it has jurisdiction due to concerns regarding the increase of density, environmental, and aesthetics and asked the Commission to give the proposal a thorough review.

Barbara Adner, New Seabury resident, was concerned about water quality, and about the commercial building proposed at Spinnaker Cove in a residential area.

Jane Coogan, New Seabury resident, expressed concerns about the overall density of development and the overwhelming amount of construction causing devastating damage to all the natural habitats surrounding the golf courses.

Mr. Babcock, Chairman of the Mashpee Water District, stated that the Water District will take all necessary steps to protect the water quality and supply of the wells in Section 5.

Eric Sharton, New Seabury resident, was concerned that what is being proposed is at a level and rate that is much too large for the community and goes against the intention of the original designer.

Hearing #2 – January 10, 2002

Diane Boretos, Assistant Mashpee Conservation Administrator, stated that the Mashpee Conservation Commission believes that the project has changed significantly and has much greater environmental impacts than the original special permit. The Mashpee Conservation Commission urged the Commission to take jurisdiction.

R.J. Lyman, attorney for New Seabury, stated that the applicant believes that the project does not fall under the jurisdiction of the Commission because of a 1964 Special Permit. He also believes that a settlement agreement with the Commission in 1993 the Commission waived its jurisdiction. Lawrence Carr, engineer/planner for the applicant, described the current development project, and outlined changes that had been made to the project during MEPA review.

M. Twombly explained the jurisdictional determination review process, the MEPA review process, and stated that staff believes the NSP Project is not exempt from Commission review.

Public testimony included:

Ms. Taylor read a letter from the Mashpee Board of Health and a letter from the Mashpee Planning Board into the record, both of which supported the Commission taking jurisdiction over the project.

William Henchey, Legal Counsel to the Mashpee Water District, indicated that the three Water Commissioners and the Water District support the Commission taking jurisdiction.

Beverly Kane representing the Mashpee Planning Board, Glenn Marshall representing the Wampanoag Tribal Council, Stephanie Jones and Michael Talbot representing the Mashpee Conservation Commission, Beverly Kane representing the Mashpee Environmental Coalition, Maggie Geist representing the Association for the Preservation of Cape Cod, and Diane Boretos representing the Mashpee Conservation Commission, all stated their support of the Commission taking jurisdiction over the project, pursuant to Sections 12 and 13 of the Act.

## **FINDINGS:**

The Commission has considered the Mashpee Conservation Commission's request for a Jurisdictional Determination for the proposed New Seabury Properties development described in the SFEIR dated October 2001, prepared by EarthTech, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings:

G1. The original 1964 Special Permit granted to the Popponeset Corporation contains three integral parts: a "Facts and Decision", a "Deed of Restrictions" and a Plan of Land. Therefore, when a modification was made to the Deed of Restrictions, a modification was also made to the original approval of the Special Permit.

G2. The Deed of Restrictions divided the 1240 acre parcel into twenty-nine sections, limiting the number of dwelling units and square footage of commercial space allotted to each section. In addition, the Deed of Restrictions deeded four parcels of land to the Town of Mashpee in accordance with the cluster zoning bylaw.

G3. The NSP Project consists of mixed-use and housing development in seven locations on New Seabury Properties land on Great Neck in Mashpee, based on the Special Permit granted by the Mashpee Board of Appeals on February 21, 1964. The current proposal is summarized in a MEPA Supplemental Final Environmental Impact Report filed in October 2001, and which received the Secretary's Certificate on Nov. 30, 2001.

G4. The NSP Project qualifies as a Development of Regional Impact (DRI) under Sections 12(i) and 13(b) of the Act requiring review of projects required to file an Environmental Impact Report with MEPA. The Project also qualifies as a Development of Regional Impact under several DRI thresholds, including:

Section 3 (d) any development which proposes to divide land into thirty or more residential lots. Any development which proposes to divide land into ten or more businesses, office or industrial lots.

Section 3 (e) any ... proposed ... development which is new construction with a gross floor area greater than 10,000 square feet, addition or auxiliary buildings with a gross floor area greater than 10,000 square feet....

Section 3 (g) any proposed development, including the expansion of existing developments, planned to create or add thirty or more residential dwelling units.

Section 3 (k) mixed use residential and non-residential developments with a total floor area greater than 20,000 square feet.

G5. Section 22 (b) of the Cape Cod Commission Act exempts from Commission review, "any development which prior to July 1<sup>st</sup>, 1989 has received any one of the following: a special permit or variance under chapter 40A and which development is constructed in substantial compliance therewith."

G6. The Commission adopted a policy defining substantial compliance dated April 1, 1992, to assist in determining if a project is exempt under Section 22 (b) of the Act. This policy lists three criteria in making a determination whether a project is in substantial compliance. All three criteria must be met for a project to be deemed to be in substantial compliance. Projects deemed not to be in substantial compliance are subject to DRI review provided a DRI threshold is met.

The project is in substantial compliance if:

- 1) the proposed project and use reflect the nature and purpose of the project and use in the original local approval; and
- 2) the changes do not result in the requirement for additional local development permit review in the form of a new permit, approval or a modification to the original approval; and
- 3) the changes do not result in different or increased impacts, as compared with the original local approval, to the interests protected by the Act and the Regional Policy Plan.

G7. The project did require modifications to the original permit in 1971 and 1990, which resulted in the requirement for additional local development permit review in the form of an approval by the town.

G8. Modifications allowed by the 1990 town meeting and agreement with the Board of Selectmen are major modifications relative to the transfer of density and increased impacts of that density on significant and sensitive resources.

G9. The second major modification was approved at a January 29, 1990 town meeting vote, and was followed by an agreement signed by the Board of Selectmen in March 1995, allowing the following transfer of dwelling units and commercial space:

- 400 dwelling units and 160,000 square feet of commercial space were transferred from Combined Sections 20, 23, 24, 25, 26 to Section 5;
- The transfer of this density to Section 5 increased the number of dwelling units from 25 to 425, and increased commercial space from 180,000 to 340,000 sf;
- New Seabury would place 30 acres of land in Section 26 under a conservation restriction, in perpetuity.

The second modification to the Special Permit, moving the density from the Combined Sections and allowing major construction specifically in Section 5, will result in different and significantly increased impacts such as extensive land clearing and excavation, nitrogen loading from pesticide and fertilizer runoff, destruction of open space and wildlife habitats, threats to archaeological resources, and impacts from stormwater runoff that puts two of Mashpee's public water supply wells at risk of contamination. These wells currently supply 55% of Mashpee's water according to the Mashpee Water District. (see more detail in Water, Natural, Coastal, and Archaeological Resource Findings)

G10. The original Deed of Restrictions within the Special Permit had a duration of 30 years, and the Special Permit thus would have expired in 1994 without an extension of the Deed of Restrictions. In 1988, Mashpee town meeting defeated an article seeking an extension of the Deed of Restrictions. In 1990, the owners of more than 50% of the residences in New Seabury signed and recorded documents purporting to extend the Deed of Restrictions until July 4, 2010.

G11. Modifications to the original Special Permit that were authorized by Mashpee town meeting vote in 1990, and executed through an agreement by the Board of Selectmen in 1995, present different and greater impacts to the resources protected by the Cape Cod Commission Act. The proposed Project is therefore not in substantial compliance with the 1964 Special Permit and is not exempt from review as a Development of Regional Impact.

## WATER RESOURCE FINDINGS

WR1. The proposal for Section 5 concentrates a high level of density in close proximity to a major public water supply well. While the area is proposed to be sewerred, this precedent setting level of development will impact groundwater. The Project would require extensive land clearing and removal of native vegetation in addition to excavation for infrastructure and road construction over three quarters of the land area in Section 5. In addition, contaminants could leach into the groundwater from fertilizers, pesticides, leaking sewer lines and stormwater runoff, and will likely degrade groundwater over the course of time.

WR2. Nitrogen loading impacts from this project, even with wastewater treatment, are significant for both fresh and marine water resources. The evaluation provided by New Seabury Properties did not account for nitrogen sources or downgradient impacts. It is uncertain if these impacts will be adequately addressed by the Department of Environmental Protection (DEP) as part of the revised groundwater discharge permit for the additional 200,000 gpd of wastewater.

WR3. The NSP Project calls for stormwater disposal in the kettle hole upgradient of the public supply wells to mitigate runoff from the tennis courts and golf driving range areas. The location of the infiltration basin to the south, as submitted in the SFEIR, is within the contributing area and very close to the well. Water table gradients are fairly flat in this area, so the combination of water table drawdown by the wells and water table mounding under the infiltration basin will divert flow towards the well.

WR4. No provisions to mitigate greater construction impacts, caused by the 1990 modification to the plan from the original permit, have been addressed in any of the MEPA filings.

## NATURAL RESOURCE FINDINGS

NR1. Portions of the NSP Project are located within Significant Natural Resource Areas as defined by the Regional Policy Plan, including Flat Pond Subdivision and Promontory Point, Section 5, and possibly portions of Marketplace and Popponessett Inn. In addition, a coastal area in the vicinity of

Great Flat Pond is designated a priority habitat of rare species and an estimated habitat of rare wildlife, according to the Natural Heritage Atlas, 2000 – 2001 edition. Portions of the project site, including Flat and Witch Ponds (and their associated wetlands), and barrier beach are located within the Waquoit Bay Area of Critical Environmental Concern (ACEC). The proponent indicates that development is not proposed within the ACEC.

NR2. The proposed Project poses different and increased impacts as defined by Criteria 3, particularly in Section 5. The 1990 modification from the originally permitted 25 residences to 425, and an increase in the total potential commercial area (the modification allows more than the proponent puts forth in his proposal outlined in the SFEIR) in Section 5 will increase the area of open space and woodland habitat that are impacted by the project. Development in Section 5 does appear to maintain a 100 ft buffer to wetlands, but much of the open space areas that remain within Section 5 (surrounding and adjacent to the Zone I areas to the wells) is comprised of managed turf, which provides extremely little habitat value.

NR3. The proponents provided inadequate information to determine whether the project poses increased impacts to natural resources throughout the project site. The natural resources inventory of the development either did not provide enough information, or provided inadequate or incomplete analysis to determine the scope of impacts to coastal and inland wetlands and wetland buffers, wildlife habitat and corridors, or vernal pools, all resources protected by the Regional Policy Plan. Therefore, the proponents have not shown that the changes to the original project do not result in different or increased impact to protected interests.

## COASTAL RESOURCES FINDINGS

C1. The proponent failed to provide information that would enable an analysis of the revised permit's consistency with many provisions of the Regional Policy Plan. The proponent provided topographic information, flood zone delineations, and lot lines to depict development in coastal areas. This information is insufficient to enable an analysis of the project's consistency with Regional Policy Plan (RPP) provisions that protect coastal resources by implementing buffer zones to coastal resources, limits on development in dynamic areas, established criteria for development in flood zones, preserving coastal processes, preserving public access and public trust resources, and protecting barrier beaches.

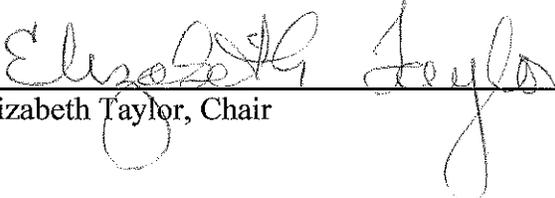
## HERITAGE PRESERVATION FINDINGS

HP1. The Massachusetts Historical Commission has determined that the Sophronia Young Family Homestead site (located in Section 5), is a significant archaeological resource and is eligible for listing in the National and State Registers of Historic Places. The proposed development for this area would impact most or all of the Sophronia Young site and, as such, represents a significantly increased threat to these archaeological resources. The previously proposed (25) dwelling units proposed under the 1964 Special Permit could have been more easily configured to avoid disturbance of the archaeologically sensitive area.

HP2. Cape Cod Commission review of the proposed project will provide greater protection for the significant archaeological resources on site. State review standards may allow for disturbance of such sites to be mitigated by unearthing and cataloging the resources (data recovery) or other means. RPP Minimum Performance Standard 6.1.3 calls for such disturbance to be avoided by redesigning the project and preserving the resources in place.

**CONCLUSION:**

The Commission hereby determines that the proposed New Seabury Properties Project in Mashpee, MA qualifies for review under Section 3 of the Development of Regional Impact Enabling Regulations and under Sections 12 (i) and 13 (b) of the Act, c. 716 of the Acts of 1989, as amended. The Commission also finds that the Project is not exempt under Section 22 (b) of the Act, because the Project is not in substantial compliance with the 1964 Special Permit approved by the Town of Mashpee, and because the Project is not otherwise exempt from review under that Special Permit. This conclusion is based on findings above. This decision is rendered pursuant to a vote of the Cape Cod Commission on January 10, 2002.

  
Elizabeth Taylor, Chair

1-24-02  
Date

Commonwealth of Massachusetts

Barnstable, ss.

On this 24<sup>th</sup> day of January, 2002, before me personally appeared Elizabeth Taylor, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

  
Notary Public  
Commonwealth of Massachusetts

My Commission expires:

