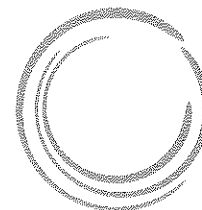


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CAPE COD
COMMISSION

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Date: April 7, 2011

To: Eliza Cox
Nutter, McClennen & Fish
1513 Iyannough Road
Hyannis, MA 02601-1630

From: Cape Cod Commission

RE: Modification of a Development of Regional Impact

Applicant: Joshua Zuckerman
Pleasant Bay Health and Living Center - Woodlands
383 South Orleans Road
Brewster, MA

Project #: TR-20075

Project Name/Location: Pleasant Bay Assisted Living Facility / Woodlands
South Orleans Road, Brewster, MA

Book/Page: Book 10930 Page 75
Book 09773 Page 341
Book 8660 Page 197
Book 609 Page 28 (Parcel A)

INTRODUCTION

The Pleasant Bay Assisted Living Facility, now called The Woodlands, was approved as a Development of Regional Impact (DRI), with conditions, by a vote of the Cape Cod Commission (Commission) on January 9, 2003. Since 2003, the Applicant has complied with applicable Water Resources conditions WR1, WR2, WR3, WR5, WR6 and WR7. Specifically, the Applicant or his engineering firm, Bennett Environmental Associates:



- submitted wastewater design plans (WR1),
- installed three down-gradient groundwater monitoring wells, one more that required by the state groundwater discharge permit (WR2),
- developed an alternative method of monitoring for phosphorous (WR3 and WR7),
- made \$500.00 annual contributions to the Orleans Water Quality Task force to offset cost for sampling and analysis of water quality in Uncle Seth's Pond (WR5), and
- developed an annual monitoring /contingency and reporting plan (WR6).

In addition, the Brewster Board of Health incorporated phosphorus monitoring into local permits with quarterly reporting requirements (WR4).

OTHER MODIFICATION DECISIONS

The 2003 DRI decision was modified by Minor Modification Type #1 decisions issued on October 2, 2006, February 5, 2007, November 6, 2007 and April 14, 2011 which dealt with changes to the exterior lighting, the facility's exterior siding, provided the right to place and maintain a driveway within the open space area and changed requirements related to the project's Commission required affordable housing, respectively.

CURRENT MODIFICATION REQUEST

In March 2009, Bennett Environmental Associates contacted Commission Water Resources staff and requested that monitoring of wells MW-1 and DG-3 be eliminated, and that phosphorous monitoring also be stopped, along with the annual \$500.00 contribution for pond monitoring.

As well MW-1 was an optional well and not part of original DRI decision or the state groundwater discharge permit, Commission staff agreed Applicant could discontinue monitoring of that well. The Brewster Board of Health concurred on this in writing on 3/23/2009.

In April 2010, the Applicant's engineer requested that monitoring of well DG-3 be eliminated, and that phosphorous monitoring and the annual monetary contribution be eliminated. After a review of 2008 and 2009 monitoring data, Commission staff did not recommend these modifications to the groundwater monitoring program.

On September 12, 2010, the Massachusetts Department of Environmental Protection (DEP) reissued a groundwater discharge permit for the project. Changes to the DEP permit included the removal of monitoring well DG-3 and the inclusion of phosphorous monitoring.

In January 2011, the Applicant's engineer submitted the 2010 annual report, and in February 2011, the Applicant made a request to the Brewster Board of Health to eliminate monitoring well DG-3 and the annual monetary contribution for pond monitoring. Commission Water Resources staff reviewed the request and subsequently recommended to the Board of Health that based on the changes to the DEP groundwater discharge permit, that the DEP permit would still address protection of water quality to Uncle Seth's Pond, and therefore supported the Applicant's request for a modification to the 2003 DRI decision (as amended).

On March 9, 2011, Commission staff received a written request by the Applicant's engineer to eliminate monitoring well DG-3 and the annual monetary contribution for pond monitoring.

COMMISSION ENABLING REGULATIONS - MODIFICATIONS

Section 13(c) of the *Enabling Regulations* (as amended March 2011) sets out the types of DRI modifications. A Minor Modification Type #1 is defined as "revisions that are a result of more restrictive conditions imposed by a local board or technical corrections or changes that the Executive Director or his/her designee determine are *de minimus* changes to the project." The *Enabling Regulations* also state that Minor Modifications #1 "shall be approved by the Executive Director or his/her designee and reported to the Regulatory Committee and do not require further review by the Commission."

DETERMINATION

The Executive Director of the Cape Cod Commission has determined that revisions to the findings and conditions of the January 9, 2003 original DRI decision, as modified, to eliminate monitoring well DG-3 and to eliminate the annual \$500.00 monetary contribution for pond monitoring constitute *de minimus* changes, and are approved as a Type 1 Minor Modifications according to Section 13 of the Commission's *Enabling Regulations* (as amended March 2011).

Changes to DRI Decision

The following changes shall be made to the findings and conditions of the original 2003 DRI decision, as amended, to reflect the requested changes as described above. New text is shown in **bold**. Text to be deleted is shown in ~~strikeout~~.

New Finding

WR9: The Massachusetts Department of Environmental Protection has reissued the Groundwater Discharge Permit (GWDP-746-1), dated 9/21/10 and requires monitoring recording and reporting of quality in wells UG-1, DG-1, DG-2 and DG-4 as shown on the plan prepared by Bennett Environmental Associates, Inc. titled "Wastewater Treatment Facility: Groundwater Monitoring Program" dated 10/30/07 with revisions through 1/27/10. Well DG-3 has been eliminated from the Groundwater Discharge Permit. Water quality parameters in the new Groundwater Discharge Permit include Total Phosphorous and Orthophosphate.

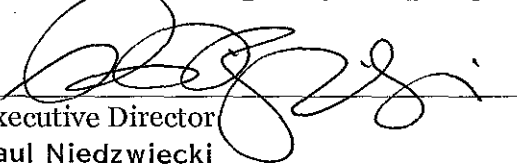
Revised Condition

WR6. Prior to issuance of a Preliminary Certificate of Compliance, the applicant shall develop an annual environmental monitoring/contingency plan (Plan) to evaluate the effectiveness of phosphorous removal from the Pleasant Bay system described in Finding WR2 on water quality in Uncle Seth's Pond. The Plan shall include measures to evaluate treatment plant efficiency, water quality trends in downgradient groundwater and in Uncle Seth's Pond, and contingency protocols if improvement is not achieved in comparison to the existing septic system serving the Nursing Home. Prior to the Preliminary Certificate of Compliance, the applicant shall also submit for Commission staff review and approval and outline/draft of the environmental monitoring/contingency plan. Prior to issuance of the Final Certificate of Compliance, the applicant shall submit the final environmental monitoring/contingency plan for Commission staff review and approval. The applicant shall also submit to the Commission and the Town of Brewster an annual report for 5 (five) years from the date of issuance of the Final Certificate of

Compliance on the effectiveness of phosphorous removal, implementation of the Plan, and water quality in Uncle Seth's Pond **copies of reports submitted to the Massachusetts Department of Environmental Protection in connection with the revised Groundwater Discharge Permit (GWDP-746-1), dated 9/21/10.**

New Condition

WR8: Phosphorous monitoring is a requirement of the 9/21/10 Massachusetts Department of Environmental Protection revised Groundwater Discharge Permit (GWDP-746-1), and will track performance of the wastewater treatment plant, and resulting downgradient water quality. This requirement addresses the requirements of condition WR5. As such, the Applicant is no longer required to provide annual monetary support to the Orleans Water Quality Task Force to assist with water quality sampling for Uncle Seth's Pond.


Executive Director
Paul Niedzwiecki

4/7/11
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

April 7, 2011

Before me, the undersigned notary public personally appeared

Paul Niedzwiecki in his/her capacity as Executive Director of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.


Notary Public

My Commission Expires: 10.13.11