

*Review of Incomplete Revised Submittal for Site Eligibility Approval
Project PE-362 "Bayberry Estates"*

**RE: Bayberry Enterprise Realty Trust
Chapter 40B Project PE-362 "Bayberry Estates"**

**SUBJ: REVIEW OF INCOMPLETE REVISED SUBMITTAL
FOR SITE ELIGIBILITY APPROVAL**

**Prepared By
Pepperell Natural Resources Association**

17 August 2007

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(1) Introduction

(1.1) Background

Bayberry Enterprise Realty Trust submitted a site eligibility application to MassHousing on July 25, 2005, for a 44 unit affordable housing project proposed for a site located off Bayberry Road in Pepperell, Massachusetts. On February 15, 2006, MassHousing issued a site approval letter of project eligibility, and an application for a Comprehensive Permit Application was subsequently submitted to the Pepperell Zoning Board of Appeals. By spring of 2007, an entirely new, materially different proposal for a 68 unit affordable housing project located off Ashley Street (Phase I) and Bayberry Street (Phase II) had been submitted by Bayberry Enterprise Realty Trust to MassHousing for site eligibility approval as an amended, not new, application.

It is of great concern to us that a materially different project, on an expanded site, with site conditions that have significantly changed, could potentially be grandfathered for site approval under a previous application that is now over two years old, if not more, and largely no longer relevant. In June of this year, our concerns were expressed to Michael J. Busby of MassHousing that we seem to be on a path for site eligibility approval of a radically different project without the opportunity in the approval process for any local oversight, review or comment by town officials, departments, boards and residents. Subsequently, the Town of Pepperell was requested to provide comments to MassHousing by August 17, 2007. Only limited incomplete material has been provided for this review.

We are attempting in this review to raise questions about the irregularities and inconsistencies of this process, and to highlight issues that are apparent to us in these eligibility applications and pro formas.

(1.2) Status of Revised Application

The previous Project Eligibility (Site Approval) letter to Bayberry Enterprise Realty Trust from Thomas R. Gleason, MassHousing, states:

“Should you consider the use of any other housing subsidy programs or the construction of additional units, you will be required to submit a new Project Eligibility (Site Approval) application for review by MassHousing.”

The original application for Bayberry Estates was for 44 units to be located on a 19.85 acre parcel, accessed from Bayberry Road in Pepperell. The revised application is for a total of 68 units, 44 units being accessed from Ashley Street and 24 units from Bayberry Road, to be located on a parcel of 62 +/- acres. This change represents a 55% increase in the number of proposed housing units, and a 211% increase in the size of the site.

As of 12 August 2007, the only materials available for review for the new 68 unit proposal are a site plan, new SmartGrowth Analysis and a single page pro forma with no supporting

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documentation. The document “MassHousing Housing Starts; Building Under Chapter 40B”, March 2006 gives a checklist that specifies “The following documentation must accompany each application”; items not available for review include:

Complete Housing Starts Application

Evidence of site control (for all parcels involved)

Broker opinion on projected sales prices for the market rate units

Community map noting the location of the site in the community

Detailed written directions to the location of the proposed site

Two copies of a by-right site plan for submittal to the selected appraiser. This conceptual plan should show the highest and best use of the site under current zoning that does not require a variance or special permit

Preliminary architectural plans including typical unit floor plans showing bedrooms, bathrooms, square footage and overall unit layout.

The new proposal for 68 units is a materially different project on a different location and with site conditions that have radically changed. In the absence of a complete application package, there is no way MassHousing, or anyone else, can have any idea what these changes are, whether they are significant and whether anything of significance is omitted.

It is our opinion that the current site eligibility application be denied for reasons that are developed later in this review. Otherwise, the current site eligibility review process should be terminated, then re-initiated at such time as a complete application package for the current proposal is available for review.

(2) Pro forma Review

The pro forma is largely unsubstantiated, and mostly lacking in sufficient detail to permit even a casual review. For example, square foot information to verify building costs is not provided. A market study is not provided for current verification of selling prices of market rate units. However, by referring to supporting documentation submitted with the original application, some insight into stated site acquisition costs can be gleaned.

(2.1) Site Acquisition Costs

The total site acquisition cost in the pro forma for the new Bayberry Estates proposal of 68 housing units (on 62 +/- acres) is stated as \$399,000. No supporting documentation is provided, and no deeds, purchase and sale agreements or any other documents are provided to verify site control. The previous Bayberry Estates proposal for 44 housing units (on 19.85 acres) states site acquisition costs as the same amount, \$399,000, and documentation submitted with that application can be used to “guess” at the breakdown for the current proposal as follows:

Site acquisition costs shown in the earlier application as \$399,000 are noted to include carrying costs of \$49,000 for a two year period. That indicates land purchase costs of \$350,000. Records on file at the South Middlesex Registry of Deeds show a transaction of \$116,666.66 on 14 January 2003 for 4 parcels of land from D.A.N. Joint Venture to

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Bayberry Enterprise Realty Trust. That amount is also incorrectly recorded in the Registry summary as 166,666.66. A second transaction of \$233,333.34 on 28 January 2003 is recorded for the same 4 parcels of land transferred from Dages and Needy to Krikorian and Morello, Trustees of Bayberry Enterprise Realty Trust. That seems to accurately describe the details on which the \$399,000 figure is based.

(2.1.1) Problem 1

It is immediately obvious to anyone having local knowledge that only 2 of these 4 parcels are the site of the proposed Bayberry Estates project. The other two parcels are located some distance away, referencing West and Harbor Streets in the descriptions, yet the costs for these two parcels have been included in the site acquisition costs for Bayberry Estates.

(2.1.2) Problem 2

The parcel (or parcels) having frontage along Bayberry Road were subdivided to create 4 new, fully conforming house lots. Three of these were sold on 7 October 2003 to Twin Valley Homes for \$442,500 and the remaining lot was sold 24 February 2004 to John Willard for \$162,000. The total realized on these sales was \$604,500. Glossing over the West Street parcels, a **73% profit** was made on the original \$350,000 purchase. The land remaining now has severely restricted frontage and significant wetlands issues, yet the original purchase price for all 4 original parcels is stated in the Bayberry Estates pro forma.

(2.2) Costs associated with market uncertainty and extended development

The proponent has previously indicated intent to complete this development within a two-year period, and the site acquisition costs suggest that the pro forma may be based on this assumption. Other 40B developments are coming on-line in Pepperell, Townsend, Groton, and other area towns, and local estimates of rates of progress for constructing and selling housing units are on the order of 5-7 units per year per project. At those rates, completing the "Bayberry Estates" project at the scale proposed could take anywhere from 9 to 13 years.

Obviously there is substantial uncertainty for any projection that far out, but it strongly suggests that a pro forma based on a 2-year plan is unrealistic. These other 40B developments will also be producing affordable and market rates units that will compete with "Bayberry Estates". The economics of this proposal are far more complex than a single page, unsubstantiated pro forma would suggest. The potential for a project failure over an extended time frame is a serious concern.

In a public meeting on 13 August 2007, the developer indicated that an overall construction/marketing schedule was anticipated in which the project would be "boot-strapped" by constructing and selling a small group of housing units, then starting work on the next group, and so forth. The total development period has previously been stated to be about two years. A question that has not been addressed is the relationship of infrastructure construction vs. housing units. Will the entire network of roads and utilities, including septic, be completed before the first housing units are completed, sold and occupied? Does the developer, and/or project, have

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the resources to sustain and support these infrastructure costs through an extended construction and marketing phase. If the infrastructure is not substantially completed before the first housing unit is sold and occupied, exactly under what conditions will those buyers be living?

This information would seem to be essential to determining the financial feasibility of this project, even at a conceptual level, but these issues do not appear to have been addressed.

(2.3) “Profit (based at 15%)”

The pro forma contains this very curious statement, followed by the explanation “(Percentage of profit over total development costs based @ 15.00%)”. The implication of course is that the profit was set, then the pro forma was “created”. This pro forma requires detailed substantiation and justification, and detailed scrutiny.

(2.4) What Factors Affecting Financial Feasibility Have Been Considered?

There is an inconsistency between the housing plans proposed for this project (4 bedroom per unit potential, refer to Section 5.7) and the septic disposal system being designed for 2 bedroom units. Because this site is so environmentally sensitive, in the comprehensive permit hearing process, the ZBA will be furnished expert advice relative to the septic system design, and will be asked to consider the potential for overloading the system(s). That almost certainly will lead to changes in the building plans to ensure that “2 bedroom units” are in fact only 2 bedroom units. That would have a direct effect on the pro forma, change the market value of the units and impact the overall financial feasibility of this project.

It appears that the challenges of developing this site, and the time to build, market and sell these units, are being seriously under-estimated. What analyses of the financial outlook for this project have been done to have some assurances that the project is actually feasible under different likely scenarios and conditions, and that the project will not be likely to fail before completion?

(3) Site Plan and Site Conditions

(3.1) Site Proposal

The site plan for the new 68 unit proposal was provided for review. We consider this plan to be so preliminary we are not making many comments. We do note that many of the wetlands crossings from the previous plan have been eliminated. There are numerous issues of public safety, emergency access, drainage, and others, that have been, or are being, commented on by others.

Given the wetlands uncertainty and the known presence of endangered species, the locations, and extent, shown on these plans for roadways, home sites and leach fields are nothing more than imaginary. The market analysis (not even updated) and pro forma must be just about as imaginary, making any decisions about project feasibility equally imaginary. Given the challenges of the site, and the apparent ignorance of those challenges, an eventual failed project would seem highly probable.

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Until new wetlands delineations and NHESP site plan approvals have been obtained, any site plan, building plan, market rate analysis, and so forth, are speculations.

(3.2) Wetlands

There are extensive wetlands on this site, and the previously established delineations have expired. New information has become available that strongly indicate further extent of wetlands, beyond that previously delineated. Since there are no established wetland delineations, soil suitability testing in the areas of the proposed sewage disposal systems cannot be done.

At various times, different statements (i.e., specific acreage) have been made by the proponent as to the extent of wetlands on the site, and these differences have been noted. The issue is somewhat moot at this time given the current unknown wetlands delineations, but in future a specific accurate determination is needed. A definitive statement of the extent of actual wetlands, and a separate tabulation of land area within wetland buffer zones on this site, should be easy to obtain and verify, once new delineations have been determined. It has been suggested that the total wetlands and wetlands buffer zones could comprise 45 % to 50% of the site, and that some of the remaining "dry" land is in pockets isolated by surrounding wetlands or perimeter property boundaries.

Bayberry Estates location within the Water Resources Protection Overlay District (WRPOD), combined with a massive point source waste disposal method, is a direct threat to the water supply of the town, and is incompatible with the Open Space Plan for protection of the town's water supply. Pepperell's Conservation Commission has pointed out that this site is an area of specific sensitivity relative to the Bemis Road municipal well, in addition to the private wells serving the majority of local residents in this part of town.

(3.3) Endangered Species

Since the fall of 2005, an extensive evaluation and field program has been performed by an independent qualified professional consultant. This survey has been on-going for almost two years, is continuing, has identified significant populations of three different endangered species in this area, and has also obtained certification of numerous vernal pools. All endangered species finds have been documented, reported to the Massachusetts Natural Heritage and Endangered Species Program (NHESP), and, except for one, all finds have been accepted and certified by NHESP. The exception is the most recent Blandings turtle sighting for which the field report is still in the paperwork pipeline.

In July (we believe) 2006, NHESP informed Bayberry Enterprise Realty Trust that their proposal would require NHESP approval. The trust has also had a professional assessment performed, and the current site plan has been drafted to reflect the findings of that assessment. That assessment however must not have been as thorough and comprehensive as the survey ongoing since 2005, since only a few findings are indicated (and those are in addition to, not duplicative of, the findings of the more comprehensive assessment). The proponent's site plan for "Bayberry Estates" seriously underestimates the endangered species activity that has been

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confirmed on this site, and does not appear to acknowledge the existence of known certified vernal pools. Even with the limited information that is shown, the plan as proposed depends on significant incursions into protection zones and wetlands buffers.

Effective October 1, 2006, NHESP published new mappings that designate this entire section of Pepperell, including the entire Bayberry Estates site, as both NHESP Priority Habitats of Rare Species and NHESP Estimated Habitats of Rare Wildlife.

The confirmation of significant endangered species presence is a major change in site characteristics that will have a major impact on any allowed construction. The current proposed site plans have not been reviewed nor approved by NHESP.

(3.4) Road Conditions and Public Safety

(3.4.1) Directions to the Site

In the original site eligibility application, the proponents gave directions to the site via Park and Oak Hill Streets from Pepperell Center. We can only guess whether this was done intentionally or out of ignorance, however, almost all local residents regularly use Heald Street to travel to and from this part of town. Oak Hill and Park Streets are the "back door" used when Heald Street is flooded or impassable during winter conditions. MassHousing appears to have made no attempt to solicit local input during a previous site inspection, and has simply ignored the very serious threats to existing and new residents posed by a massive increase of vehicular traffic on these roads.

(3.4.2) Local Road Conditions

The roads serving the northwest section of Pepperell are especially narrow, winding, and hilly. These are typical rural roads that started out as cow paths and dirt tracks serving isolated farms. Until the late 1970s, for example, Bayberry Road was a dirt trail which terminated at the original colonial home, the only home in the area at that time. Since the late 1980s, many, but not all, of these original roads have been given a top coating of asphalt, but retain all other original characteristics of sharp turns, hills, extremely limited sight distances and narrow widths. These conditions are acceptable given the current limited traffic load.

Ashley Street itself, running between Chestnut and West Streets, is the only road in this area that has been designed and constructed to modern standards.

There are perhaps 3 or 4 street lights in an area measured in square miles, and there are no sidewalks anywhere in the entire area. All resident and visitor activities such as walking, jogging, bike riding, and so forth, occur in the travel lanes of the roadways.

(3.4.3) Heald Pond Dam

Heald Pond Dam is located on Gulf Brook and was originally used to store water for downstream water powered mills. Remnants of two small dams exist about 500 and 600 feet downstream.

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This is an earthen dam, and Heald Street, providing the principal access from Pepperell center to residences in the northwest section of Pepperell, including the proposed Bayberry Estates, is itself the top of the dam.

An evaluation of Heald Pond Dam was commissioned by the Pepperell Conservation Commission in 2006. Inspection of the dam done by the environmental consulting firm Tighe & Bond found that the dam is in poor condition. This evaluation cited a partially failed left secondary spillway wall and deteriorated condition of the spillway structure.

The poor dam condition has been well known from previous investigations, but the current traffic load over the dam is limited and light. However, the Tighe & Bond inspection report cited that any heavy construction equipment and material delivery vehicles, such as those associated with large construction projects, may have an adverse impact.

To carry out the recommendations at Heald Pond Dam, it will be necessary to prepare a Chapter 253 permit application in accordance with 302 CMR 10 Dam Safety Regulation and applications in accordance with the Massachusetts Wetland Protection Act.

(3.4.4) Heald Street

The alignment of Heald Street at this location is very unsafe for vehicular traffic. The horizontal and vertical road geometry is substandard, in addition to the narrow pavement width, steep embankments, and proximity to a water body. Field measurements in 2006 found road widths narrowing to as little as 17.5 feet between vertical embankments on the climb from the pond up to Bayberry Road and beyond.

This hilly, winding section of Heald Street climbing up from the pond to Bayberry Road is particularly treacherous for pedestrians. The very narrow road climbs a hill with high banks on one side, steep drop-offs on the other side, leaving almost no escape paths. The most narrow, winding and vertically challenged sections of this road, and some others in the area, are constrained on both sides by existing conservation restrictions.

Sight distances are severely limited, both horizontally and vertically, in many other locations along the entire portion of Heald Street, from east of Maple Street to its end at West Street.

(3.4.5) Previous Traffic Study by Proponent was Seriously Deficient

A previous traffic study by the proponent, presented in a hearing to the Pepperell ZBA, has been shown to be based on insufficient measurement data, has a conclusion which is inconsistent and incomplete with respect to the data presented, recommends insufficient mitigation measures, and, most significantly, fails to address several obvious safety concerns. The author of this study is not a registered professional engineer.

(3.4.6) Increased Traffic Poses Safety Threat to Current and New Residents

Short of a massive and financially impossible “Big-Dig” effort to widen, straighten and improve the sight distances of local roadways, in particular Heald Street, the roads in this part of town will never be capable of safely handling any significant increase in vehicle and pedestrian traffic. The increased vehicle and pedestrian traffic associated with the proposed project will significantly increase the opportunities for accidents involving property damage, injuries, and possible fatalities. These are risks that far outweigh any benefit from the construction of the proposed 40B development.

(3.5) Native American Sacred Ceremonial Site

The Narragansett Tribal Historic Preservation Office has confirmed that the proposed “Bayberry Estates” construction site is a Native American sacred ceremonial site. Previously unknown artifacts and constructions of Native American origin are located throughout the site.

Not only because of their Native American significance, these artifacts are an important part of Pepperell’s history and heritage, and are a direct link to very early colonial era activity in the area, especially King Philip’s War. This site appears to have remained undisturbed since that time. A previous archaeological “dig” by the state in Pepperell found evidence of significant pre-colonial Native American activity and quite possibly this site may be archaeologically significant as well. A detailed survey and study to determine the extent and significance of these findings should be required before any of these artifacts are disturbed or destroyed.

(3.6) On-site Inspection

An on-site inspection was done for the previous site eligibility application. Local concern was expressed because a number of site conditions, well known to the town and current residents, were not noted in the site inspection report, and the criteria for the site inspection were undefined. Because the published directions to the site were judged by local residents to be misleading, there was further concern that an effort had been made to conceal actual site conditions.

Inviting local representatives to accompany a site inspector would greatly enhance the local perception that a reasonably complete and accurate survey of the site had been obtained, according to measurable criteria appropriate for the purpose of the inspection.

(4) Smart Growth Analysis

The SmartGrowth analysis prepared by the proponent of this project recognizes that the project *does not satisfy* the Redevelop First principle. Consistency with the Commonwealth’s Sustainable Development Principles is then considered if this (home ownership) project does satisfy at least five (5) of the remaining nine (9) principles. The analysis that was submitted by the proponent and is reviewed here states that the project *does not satisfy* the principles of Provide Transportation Choice; Increase Job Opportunities; and, Foster Sustainable Businesses.

As submitted the proponent’s analysis claims to satisfy six (6) of the Sustainable Development Principles. The review following discusses each claim and shows that at best only one of these

principles may be technically satisfied. Whether one other principle might also be considered satisfied is arguable.

(4.1) Concentrate Development

Proponent claims ...

- *The project is at a higher density than the surrounding area. (Yes, it is.)*
- *The project creates multi-family housing using varied configurations (no information identifying those configurations is provided; only one set of house plans was indicated in the previous application.)*
- *No public sewer is available in Pepperell (this is not true, it is only not available in this section of town).*
- *The project is compact and will result in the preservation of approximately 38+/- acres of land (61.7% of the site) as open space. This is at least highly misleading. Remember that the site consists of pockets of dry, possibly buildable land, located within a matrix of wetlands consisting of vernal pools, flowing streams, and springs. The known presence of endangered species and endangered species nest sites further restricts potential development. The project is compact. In fact, it crams roads, home sites and sewage disposal leach fields into every single possible (and impossible) square inch of the property. The claimed “open space” that is preserved is the remaining “swamp”. It does not create or provide any “open space” that can be enjoyed by the residents in recreational activities. No standard type of development of this land would protect any less land.*

The application **does** satisfy the Concentrate Development Principle (but only technically based solely on density).

(4.2) Restore and Enhance the Environment

Proponent claims ...

- *The project is compact and will result in the preservation of approximately 38+/- acres of land (61.7% of the site) as open space.*
- *The project protects the existing wetlands on-site by concentrating development away from these specified resource areas.*
- *The project satisfies the Restore and Enhance the Environment principle.*

Town maps as far back as the early 1800s show no buildings or structures on this property. It is believed that the only uses since settlement were for wood harvesting and livestock grazing. It is about as pristine a piece of property as anything existing anywhere in Massachusetts today.

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It has been confirmed by the Narragansett Tribal Historic Preservation Office as a Native American sacred ceremonial site. Previously unknown artifacts and constructions of Native American origin are located throughout the site.

It is a valuable wildlife resource area, abutting an existing Area of Critical Environmental Concern, an immediate neighbor of the Pepperell Springs and Nashoba Conservation Trust conservation lands, and it has been mapped by the Massachusetts Natural Heritage and Endangered Species Program as a Priority Habitat of Rare Species and Estimated Habitat of Rare Wildlife.

The opinion of the administrator of Pepperell’s Conservation Commission is that because this project does concentrate development in an inappropriate natural resource-rich area of Pepperell, it violates the Restore and Enhance the Environment principle.

Further, the administrator states that there is no evidence of any restoration or remediation associated with this project. If several more ANR lots were developed from the minimal remaining frontage on Bayberry and Ashley Streets, many fewer homes would be added to this property than are proposed under this plan. Less dense development, guided by wetland permitting, would do less damage to the environment in this area. On the other hand, a subdivision following local zoning would be required to submit an Open Space Residential Development Plan (Zoning By-Law, Section 7130) which would again protect more land than this project.

The project **does not** satisfy the Restore and Enhance the Environment principle.

(4.3) Be Fair

Proponent claims ...

- *A significant hearing process was begun for the original 40B Project where it was brought to the developers attention many abutter concerns including alternate access and use of all abutting property owned by the Applicant, as such, the decision was made to merge the two projects into one in order to respond to many concerns. (Abutters were told the developer had no plans and did not know what would eventually be done with the remaining property. The phrase in the preceding proponent claim (“merge the two projects into one”) indicates otherwise. Abutters were well aware of plans submitted by the developer to the Pepperell ZBA that were labeled “Phase 1”. Developer was also quoted in newspaper articles indicating possibly as many as two hundred triplex and quadplex units would be constructed on the remaining land in subsequent phases. Abutters are also very well aware of timing of NHESP notification to the developer, endangered species evaluations, and the ‘creation’ of the new plans. This is a transparent, self-serving claim.)*
- *The project involves a streamlined permitting process, such as 40B or 40R. (Yes, it does.)*

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- *The project will preserve and create walking trails and significant open space, which will promote pedestrian friendly streetscapes.* (As noted above, this project proposes to cram the roads, home sites and leach fields into every single available square inch of dry land on this parcel, leaving the unbuildable remaining swamp lands as the “significant open space”. That space will not provide any recreational or sporting opportunities for residents. The only space left for “walking trails” will be the 4 or 5 paces from front door to street. This is a self-serving and insulting claim.
- *The project creates affordable housing in a neighborhood or community whose residents are predominantly middle to upper income and/or meets a regional need.* (There is some doubt about the general income level in the neighborhood, and there are no known statistical tabulations to either prove or disprove this assertion. There are obviously several expensive homes in the area. However, there is also an extensive distribution of very modest homes. This proposed project is also entirely incompatible with local and regional needs (refer to Section 4.6).
- *The project will promote diversity and social equity in the Town of Pepperell.* The ending words of this statement as written by DHCD (improves the neighborhood) were omitted by the proponent.

Providing affordable housing to new residents in a remote area far from the center for employment and shopping can hardly be considered fair to those residents, especially when the Town of Pepperell has established a mixed use zoning overlay district specifically to attract affordable housing to the downtown center. The Chairman of Pepperell’s Planning Board states (Section 4.6.1) that this project “does not meet the needs of the community”.

This project does involve a streamlined permitting process (40B), but all other justifications for satisfying this principle are so flawed that we conclude this project **does not** satisfy the Be Fair principle.

(4.4) Conserve Resources

Proponent claims ...

- *The project will comply with EPA Energy Star guidelines, in addition to those required by code.* (This is another self-serving and non-binding claim, not much different than saying, for illustration, that this project will pave the streets with gold. The EPA Energy Star program is very comprehensive and involves qualifying appliances, materials and procedures, as well as installation and inspection requirements. The mere claim that this project will comply with the EPA Energy Star guidelines is not acceptable, especially if that claim, and that claim only, becomes the determining condition that results in the approval of this site eligibility application. This claim would be acceptable only if the proponent also committed to an independent program of Energy Star guidelines, inspections and compliance audits, with severe penalties for non-compliance. In addition, by

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locating this project in one of the most remote sections of town, resource consumption by transportation will be greatly increased, and that increase may not be offset by any Energy Star program in any case.)

As stated, this project **does not** satisfy the Conserve Resources Principle.

(4.5) Expand Housing Opportunities

Proponent claims ...

- *The project increases the number of homeownership units available to residents of the Commonwealth, including low- or moderate-income households. (Can’t disagree with that per se, except that these housing opportunities are in the wrong location, and are not consistent with local and regional planning for affordable housing.)*
- *Given the flexibility of the layout of the units, the project will provide a significant number of units that could be suitable for mobility impaired households. (No doubt a significant number of these units could be suitable for many, many things. This claim doesn’t actually propose to provide anything.)*

Technically, this claim may demonstrate one of the ways to satisfy the Expand Housing Opportunities principle, but it is an expansion that is inconsistent with local and regional planning, and inconsistent with the restore and enhance the environment principle. Whether this project satisfies the Expand Housing Opportunities principle is **arguable**.

(4.6) Plan Regionally

As stated in the DHCD guidelines, this principle is intended to support the development and implementation of **local and regional plans** that have broad public support and are consistent with these principles. Foster development projects, land and water conservation, transportation and housing that have a regional or multi-community benefit.

Proponent claims ...

- *Although Pepperell is not part of a municipally supported regional plan, assuming their involvement Local Preference Option that 40B projects allow for, it is anticipated that up to 70% of the households purchasing the Affordable Units could come from Pepperell. However, there will also be Affordable Housing buyers from adjacent communities. (First, Pepperell is part of a municipally supported regional plan, and, second, buyers for market rate and/or affordable units will come from somewhere, maybe, but that has no bearing on consistency of the project with local and regional plans.)*
- *Although there is no Regional Housing Plan, the proposed development will be able to provide affordable housing by utilizing Chapter 40B. Chapter 40B makes it possible to offer a variety of building types at a higher density than would otherwise be possible*

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under existing zoning. The development also expects to be granted other exceptions to local rules. Therefore three of the impediments that normally prevent the production of affordable housing: lack of appropriate zoning; municipal density restrictions that eliminate the opportunity to create economically feasible affordable housing; and local subdivision “rules and regulation” requirements that also restrict the opportunity to create economically feasible affordable housing. The subject project addresses each of these impediments. The proposed development will also affirmatively address all Fair Housing requirements. (First, Pepperell is part of a municipally supported regional plan; second, local zoning is in place to encourage opportunities to create economically feasible affordable housing; and, third, this project ignores the incentives that have been created to promote affordable housing in Pepperell.)

This project **does not** satisfy the Plan Regionally principle. It smacks more of simple egregious exploitation. Pepperell has been very active and effective in both local and regional plans and initiatives to support affordable housing solutions that make sense, and truly serve a population in need. These accomplishments are highlighted in following paragraphs.

(4.6.1) Local Plans and Initiatives

Pepperell’s Affordable Housing Plan addresses 1) Housing Needs, 2) Affordable Housing Goals, 3) Affordable Housing Strategy, and 4) Use Restriction Guidelines. This plan was prepared in accordance with 760 CMR 31.07(1)(i) and has been approved and accepted by DHCD. The proposed Bayberry Estates development, located in one of the most isolated, rural, and environmentally sensitive areas of the town, is completely incompatible with Pepperell’s approved Affordable Housing Plan.

Pepperell’s Comprehensive Master Plan is perhaps best characterized by “Pepperell’s Vision”: A family-oriented community with an abundance of open space and sensitive natural resources, the Town of Pepperell enhances its rural small-town character, municipal infrastructure and services, and housing options for families and its aging population by channeling growth into village settings near municipal facilities and services. The proposed Bayberry Estates is completely incompatible with Pepperell’s Comprehensive Master Plan.

An extensive, derelict and mostly abandoned complex of mill and industrial buildings is located in the downtown center of Pepperell. Pepperell residents have supported zoning changes at Town Meeting to attract affordable housing projects to this site. The mixed-use overlay district adopted for Pepperell’s mill area includes a 10% affordable housing requirement which is consistent with meeting the affordable housing requirements of the region. Pepperell’s planning board is reviewing 40R and 43D legislation for potential implementation. The proposed Bayberry Estates is completely incompatible with these initiatives.

The Chairman of Pepperell’s Planning Board comments “Pepperell has identified areas of the community for which this type of project would be acceptable and there is even land available for development in those areas. The location of this development on the outskirts of the community does not correlate with “Smart Growth” practices, as the development would be as far removed from the community commercial and employment areas as it could possibly get.

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The proposed location of the project in its current form does not meet the needs of the community.”

A primary goal of Pepperell’s Open Space and Recreation Plan is protection of the town’s water supply. Water security is a matter of public health, quality of life, and financial concern. Pepperell’s water supply is adequate in quantity and exceptional in quality largely because its recharge areas are able to capture, purify, and store enough water for the Town’s needs. Open space containing undisturbed forests, streams, swamps, and marshes within the recharge areas provides this priceless service. Bayberry Estates location within the Water Resources Protection Overlay District (WRPOD), combined with a massive point source waste disposal method, is a direct threat to the water supply of the town, including the Bemis Road municipal well and individual private wells in the immediate vicinity, and is incompatible with the Open Space Plan for protection of the town’s water supply. It should be noted that Pepperell’s municipal water distribution system in the area is limited to the lower section of Heald Street, Ashley Street, and the four new homes on Bayberry. All other homes in the entire northwest section of Pepperell are served by private wells. It is further noted that Pepperell’s plan is consistent with the Greater Lowell Regional Open Space Strategy completed by the Northern Middlesex Council of Governments.

(4.6.2) Regional plan

The regional plan, “2020 Vision: Planning for Growth in the Northern Middlesex Region”, was prepared by the Northern Middlesex Council of Governments (NMCOG) in Lowell for the northern Middlesex area, with the participation of every municipality in the region. The plan recognizes that the region will retain a balance of urban, suburban and rural areas. It calls for new economic development projects focused in areas already served by infrastructure, and emphasizes mixed use development to lessen the need for multiple vehicle trips to accomplish daily tasks and thereby improve traffic conditions. Objectives include revitalizing town, village, and downtown commercial centers; decreasing auto dependence; increasing the use (not simply the availability) of public transportation; decreasing traffic congestion; and, promoting mixed-use centers that include residences. The proposed Bayberry Estates is incompatible with all these regional planning objectives.

Substantial portions of the northern Middlesex region are rural, and the regional plan seeks to balance economic growth and development with preservation of environmental quality and resources. Plan objectives include minimizing the conversion of open space for development; maximizing the use and economic value of existing infrastructure; and, minimizing the impact of development on environmental quality and resources. The proposed Bayberry Estates is incompatible with all these regional planning objectives.

Preservation and protection of open spaces, environmentally sensitive areas, and protection of water resources, both surface water and ground water, are specifically emphasized by this regional plan. The proposed Bayberry Estates is incompatible with all these regional planning objectives.

(4.7) Summary: Bayberry Estates does not satisfy criteria for compliance with the Commonwealth's Sustainable Development Principles

The SmartGrowth Analysis submitted for the revised "Bayberry Estates" project claims to satisfy six (6) of the Sustainable Development Principles. The above review points out that only one of the principles, Concentrate Development, is technically satisfied. However, compliance with that principle, and with a second principle, Expand Housing Opportunities, is highly questionable since the concentrated density and expanded housing to be provided is located in an extremely remote area far removed from the sections of town considered desirable for affordable housing. The project either does not satisfy or violates the remaining principles.

DHCD guidelines state that projects proposed by sponsors seeking funding from DHCD's housing and community development programs, financing from MassHousing, [etc.], **must be consistent** with the Principles of Sustainable Development. The method for determining consistency is specified in guidelines published by DHCD, and, for this proposal, requires consistency with at least five (5) of nine (9) Sustainable Development Principles. "Bayberry Estates" technically is consistent with only one (1) of those principles, and **does not satisfy criteria for compliance** with the Commonwealth's Sustainable Development Principles.

Additionally, this project is not consistent with Governor Patrick's new Sustainable Development policies that were announced in May of 2007.

The site eligibility for this proposed project should be denied.

(5) Missing Elements of Site Eligibility Application

In the introduction to this review we pointed out that this site eligibility application is for a materially different project than had previously been approved for site eligibility, and site conditions have radically changed, yet only a few of the application documents have been updated. In the absence of a complete application package, there is no way MassHousing, or anyone else, can have any idea what these changes are, whether they are significant and whether anything of significance is omitted. Following sections express concerns and significance relative to the missing parts of this application.

(5.1) Complete Housing Starts Application

The actual site eligibility application itself does not appear to have been submitted for the new proposed "Bayberry Estates" project. The project description, type of housing, mix of affordable and market rate units, age restrictions, anticipated source of financing, site information, acreage, current zoning, size of the development, construction period, and housing unit descriptions (number of units, bedrooms, baths, square footage) for the proposed revision are unknown. Obviously some of the information provided in the original application has changed, and some has not changed. There has been a 55% increase in the number of proposed housing units and a 211% increase in site acreage. Exactly what else has changed? Are the changes significant or not? Who knows and who can tell?

(5.2) Evidence of site control (for all parcels involved)

No evidence of site control has been provided for this application. We can assume that two of the four parcels for which deeds were provided for the previous application are still involved, although one of those parcels was subdivided and frontage lots were sold off. The exact description of the remainder, and its access to town roads, has not been detailed.

The new plan shows primary access to Ashley Street via a road that passes through property at 7 Ashley Street, formerly owned by Richard Morello, a trustee of Bayberry Enterprise Realty Trust, but now owned by Richard and Laurie Sheridan. We are aware that this access is via an easement over privately owned property. Is MassHousing aware of this and is it acceptable? In any case, no evidence of site control for this primary point of access to the proposed development has been provided by the proponent. No description of the easement, any particular rights and/or conditions or anything related to it has been provided with the application.

The new proposed 68 unit plan for Bayberry Estates shows an emergency access road extending out to Ashley Street between 13 and 15 Ashley Street. The application does not include any documentation verifying site control for this access.

In both the above instances, access to the site has been assumed via "new" property. No evidence of site control is provided, and there appears to have been no adjustment of the pro forma to account for changes in site acquisition costs.

(5.3) Broker opinion on projected sales prices for the market rate units

Concerns were raised about the marketability of these housing units in a review of the previous application. The market analysis appears to have been done prior to mid-2005 and there have been major changes in the overall housing sector since that time, in addition to important changes in local housing stock and outlook. The market analysis does not appear to have been updated (at least no new analysis has been provided) for the new application, which in itself will provide additional units to compete in the market. The pro forma, and financial outlook assumptions, have apparently been based on an outdated and obsolete analysis. Previous concerns about specific profit levels are being displaced by an increasing concern of the prospect of a project failure after a partial start.

As discussed in Section 2.2 above, a number of new 40B developments in Pepperell and surrounding towns are coming on line, now and in the likely time frame for Bayberry Estates. Some of these are LIPs that are being actively encouraged in Pepperell. The housing units expected, or scheduled, to be built in these projects will directly compete in the market for Bayberry Estates.

Also mentioned in Section 2.2 above, the time to market the Bayberry Estates units appears to have been very seriously underestimated, at least according to public statements by the proponents. Increased competition, longer time for construction and sales, and overall housing outlook make any decisions of project feasibility based on outdated "broker opinions" very questionable.

**(5.4) Community map noting the location of the site in the community
(5.5) Detailed written directions to the location of the proposed site**

Only the original application provided written directions to the site, and these were considered to be misleading (discussed in Section 3.4 above). Accurate directions to the site would provide some assurances to local residents that the actual local conditions regarding traffic safety and traffic hazards were being made known to MassHousing.

(5.6) Two copies of a by-right site plan

MassHousing’s Process and Guidelines documentation states “all applications submitted to MassHousing for project eligibility under the Housing Starts or New England Fund Programs **must** be accompanied by an appraisal to determine the allowable land acquisition cost in the development budget.” MassHousing’s checklist for documents to be submitted in a site eligibility application **requires** “Two copies of a by-right site plan for submittal to the selected appraiser. This conceptual plan should show the highest and best use of the site under current zoning that does not require a variance or special permit.” It appears that no by-right site plan or appraisal has been done for either the revised or the original Bayberry Estates plan.

(5.7) Preliminary Architectural Plans

Preliminary architectural plans including typical unit floor plans showing bedrooms, bathrooms, square footage and overall unit layout are required in a site eligibility application, yet none have been provided with this application. Only a single set of plans had been submitted with the comprehensive permit application for the original site eligibility application. Does the proponent propose to use the same set of plans for this new application?

MassHousing Guidelines state that the affordable housing units must contain a variety of bedroom sizes and unit styles. How will that be accomplished in this proposed development? What about the market rate units?

In the absence of any other documentation or indications to the contrary, one can only assume that the intent could very well be to replicate 68 copies of a single design in a compact site. Specific details of design aesthetics are of course not relevant to the site eligibility process, but some assurances of the overall “vision” for the quality of life that would be afforded residents of this proposed project are certainly in order.

Exactly what design modifications are proposed to make this an attractive and appealing development?

Plans were submitted with the comprehensive permit application for the original site eligibility approval, indicating two bedrooms, but also showing a second floor den and a walk up third floor “attic”. In essence, four bedroom homes planned for a development with on-site septic disposal designed only for two bedroom homes. While that detail would be more appropriately addressed in the comprehensive hearing process, the location of this project within a Watershed Protection

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Overlay District, with proposed on-site sewage disposal, means that the number of potential bedrooms allowed will very likely be reduced. Exactly how this might affect the market analysis appears not to have been considered.

(6) Conclusion

The proposed Bayberry Estates project, in both the original and revised versions, does not satisfy the required minimum conditions for compliance with the Commonwealth's Sustainable Development Principles, is in opposition with all local and regional affordable housing plans and initiatives, presents a threat to public health and safety, and threatens a sensitive and protected environment.

It is our opinion that the current site eligibility application be denied for reasons that have been discussed in this review.

If that denial is not granted, the current site eligibility review process should be terminated, then re-initiated at such time as a complete application package for the current proposal is available for review.