



Massachusetts Housing Finance Agency  
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000  
FAX: 617.854.1091 | www.masshousing.com

Videophone: 857.366.4157 or Relay: 711

February 15, 2018

River Marsh, LLC  
Brian Murphy  
293 Washington Street  
Norwell, MA 02061

**Re: River Marsh  
Project Eligibility/Site Approval  
MassHousing ID No. 916**

Dear Mr. Murphy:

This letter is in response to your application as "Applicant" for a determination of Project Eligibility (Site Approval) pursuant to Massachusetts General Laws Chapter 40B ("Chapter 40B"), 760 CMR 56.00 (the "Regulations") and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development ("DHCD") (the "Guidelines" and, collectively with Chapter 40B and the Regulations, the "Comprehensive Permit Rules"), under the New England Fund ("NEF") Program ("the Program") of the Federal Home Loan Bank of Boston ("FHLBB").

You have proposed to build fifty-six (56) condominiums (the "Project") on 49.94 acres of land located on Water Street (the "Site") in Pembroke (the "Municipality").

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility by MassHousing acting as Subsidizing Agency under the Guidelines, including Part V thereof, "Housing Programs In Which Funding Is Provided By Other Than A State Agency."

MassHousing has performed an on-site inspection of the Site, which local boards and officials were invited to attend, and has reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules.

#### **Municipal Comments**

Pursuant to the Regulations, the Municipality was given a thirty (30) day period in which to review the site approval application and submit comments to MassHousing. In response to a request from the Pembroke Board of Selectmen, this review period was extended to sixty (60) days. The Board of Selectmen provided an initial comment letter, received by MassHousing on February 27, 2017, identifying numerous concerns with the Project, and urging MassHousing to deny the Application for Site Approval.

On July 26, 2017, MassHousing and the Municipality received revised site plans from the applicant, showing modifications made by the Applicant in response to feedback from MassHousing and the Municipality regarding the site layout and building design. The number of units was reduced from sixty-eight (68) units to fifty-six (56) units, and revisions were made to the original site plan, including the removal of proposed housing structures from the portion of the Site closest to the North River and pulling those units further away from areas subject to review under the Wetlands Protection Act.

Following receipt of the revised Site Plan, the Pembroke Board of Selectmen asked for and were granted an additional thirty (30) days to review the revised plans. On August 25, 2017, MassHousing received a second comment letter from the Pembroke Board of Selectmen stating that the revised Site Plan is slightly smaller and less obtrusive, but that they remained in opposition to the Project, and affirming that all of the comments included in the initial comment letter remained unchanged.

The following concerns were identified in their comments:

- The Selectmen's letter emphasized that part of the Site sits in extremely sensitive wetlands, and as such any development of this Site must be designed to protect the surrounding wetlands and ensure that the species of animals and plants found in the area are protected. They emphasized that the Project's stormwater collection and treatment system must prevent erosion and contamination to the nearby North River both during and after construction. They questioned the impact of a significant amount of new impervious surfaces (buildings and paved areas) on groundwater recharge patterns in this area.
- The Selectmen expressed concern about the additional traffic that would be generated by the Project, and associated safety impacts on area roadways and intersections, particularly the intersections at Water Street and Route 139. Pedestrian safety was also identified as a concern in light of the lack of sidewalks in this area.
- The Selectmen also provided comments from the Pembroke Fire Department. The Fire Department emphasized that the Project must be designed so as to ensure the maximum level of emergency access and fire protection. They outlined a variety of requirements for the Project including fire lanes, sufficient roadway widths and intersection radii to accommodate public safety vehicles, hydrants and interior fire suppression systems.
- Pembroke Selectmen expressed concerns about the sufficiency of the existing water supply and encouraged the implementation of water-saving facilities at the Project.

### **Community Comments**

In addition to the comments from town officials, MassHousing received several letters and signed petitions from area residents, all of which expressed opposition to the proposed Project. Although letters from members of the community basically echoed the concerns identified by the local officials, the letters received are summarized below:

- Area residents expressed concern about potentially negative environmental impacts of the Project. They noted that portions of the Site have historically experienced flooding and expressed concern that Project grading could result in erosion and flooding impacts on adjacent properties. In addition, they are concerned that the Site supports a large and diverse

wildlife population and that the proposed Project may result in harm to wildlife and its associated habitat.

- Area residents voiced concern with existing traffic congestion on Water Street, and the possibility that the Project would exacerbate traffic volumes and further reduce the level of service at area intersections. Letters expressed the concern that increased traffic volume on area roadways would result in unsafe conditions for residents traveling onto Route 139.
- Area residents expressed concerned that the proposed Project will deplete the groundwater supply.
- Area residents believe the proposed buildings are significantly out of scale within the context of the existing residential neighborhood.

MassHousing received a separate letter from the North & South Rivers Watershed Association Inc., dated August 28, 2017. This letter expressed the opinion that the density of the development threatens to undermine the scenic quality, wildlife habitat, water quality, and environmental health of the Site.

MassHousing was also contacted by several State Representatives including Josh Cutler, James Cantwell, Joan Meschino, David DeCoste, and two State Senators, Viriato deMacedo and Patrick O'Connor. The legislators collectively provided letters dated February 8, 2017 and August 31, 2017, expressing concerns about the proposed development. Representative Cutler and others reiterated constituent concerns about the potential impacts of the Project on area traffic, wetlands and natural resources and recommended that MassHousing not issue a Project Eligibility letter for this proposed Project.

MassHousing has carefully considered all municipal concerns and, to the extent possible within the context of Site Approval, has offered responses in the "recommendations" section of this letter. It is anticipated that the Municipality, through the comprehensive permit process, will thoroughly review the Project proposal and identify all conditions necessary to ensure consistency with "local needs" as defined in M.G.L Chapter 40B, Section 20.

#### **MassHousing Determination and Recommendations**

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to final review of eligibility and to Final Approval. As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto.

Based on MassHousing's site and design review, and in light of feedback received from the Municipality, the following issues should be addressed in your application to the Zoning Board of Appeals, and you should be prepared to explore them more fully during the public hearing process:

- Development of this site will require resolution of all environmental conditions per laws, regulations and standards applicable to existing conditions and to the proposed use, including but not limited to compliance with all applicable statutory and regulatory restrictions relating to floodplain management, the protection of wetlands, river and wildlife habitats/conservation areas, as well as local and state environmental protection requirements

relating to the protection of the public water supply, stormwater runoff, wastewater treatment, and hazardous waste safety. The Applicant should provide evidence of such compliance prior to the issuance of a building permit for the Project.

- Plans for the Project must comply with all conditions contained in any Order of Conditions issued by the Conservation Commission or the Department of Environmental Protection in connection with the Project.
- The Applicant must comply with Title V regulations regarding the design and construction of individual wells, septic systems and wastewater treatment plants. The Applicant should provide evidence of such compliance prior to the issuance of a building permit for the Project.
- The Applicant should be prepared to provide a detailed traffic study assessing potential impacts of the Project on area roadways, including traffic volumes, crash rates, and the safety and level of service (LOS) of area intersections, and identifying appropriate traffic mitigation in compliance with all applicable state and local requirements governing site design.
- The traffic study or other professional site design process should address proposed on-site circulation and parking to ensure compliance with public safety standards and good design practice relative to drive-aisle widths, turning radii and sight distances along the Site drive and the parking areas through which it passes. The Applicant should be prepared to address concerns about provisions for safe pedestrian access and pedestrian/vehicular separation within the Site, sufficiency of resident and guest parking, and plans for snow storage.
- The Applicant should be prepared to provide detailed information relative to proposed water use, potential impacts on existing capacity, and appropriate mitigation.
- A landscape plan should be provided to address Municipal concerns, including a detailed planting plan as well as paving, lighting, and signage details and the location of outdoor dumpsters or other waste receptacles.

This Site Approval is expressly limited to the development of no more than fifty-six (56) homeownership units under the terms of the Program, of which not less than fourteen (14) of such units shall be restricted as affordable for low or moderate-income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a Comprehensive Permit, the use of any other housing subsidy program, the construction of additional units or a reduction in the size of the Site, you may be required to submit a new Site Approval application for review by MassHousing. Should you consider a change in tenure type or a change in building type or height, you may be required to submit a new site approval application for review by MassHousing.

For guidance on the Comprehensive Permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations at 760 CMR 56.00.

This approval will be effective for a period of two (2) years from the date of this letter. Should the Applicant not apply for a Comprehensive Permit within this period or should MassHousing not extend the effective period of this letter in writing, this letter shall be considered to have expired and no longer be in effect. In addition, the Applicant is required to notify MassHousing at the following times throughout this two-year period: (1) when the Applicant applies to the local ZBA for a Comprehensive Permit, (2) when the ZBA issues a decision and (3) if applicable, when any appeals are filed.

Should a Comprehensive Permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

**Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBB, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a "final draft" of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.**

If you have any questions concerning this letter, please contact Michael Busby at (617) 854-1219.

Sincerely,



Thomas J. Lyons  
Acting Executive Director

cc: Chrystal Kornegay, Undersecretary, DHCD  
The Honorable Viriato M. deMacedo, State Senator  
The Honorable Josh S. Cutler, State Representative  
Willard J. Boulter, Jr., Chairman, Board of Selectmen  
William Cullity, Chairman, Zoning Board of Appeals

## Attachment 1

760 CMR 56.04 Project Eligibility: Other Responsibilities of Subsidizing Agency  
Section (4) Findings and Determinations

### River Marsh, Project #916

After the close of a 30-day review period and extensions, MassHousing hereby makes the following findings, based upon its review of the application, and in consideration of information received during the site visit and from written comments:

***(a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);***

The Project is eligible under the NEF housing subsidy program and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income (AMI), adjusted for household size, as published by the U.S. Department of Housing and Urban Development ("HUD"). The most recent HUD income limits indicate that 80% of the current applicable median income for a four-person household in Pembroke is \$78,150. A letter of interest was provided by South Shore Bank, a member bank of the Federal Home Loan Bank of Boston.

***(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the Municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);***

The Town of Pembroke does not have a DHCD approved Housing Production Plan. According to DHCD'S Chapter 40B Subsidized Housing Inventory (SHI), updated through December 5, 2017, Pembroke has 625 SHI units (9.6% of its housing inventory) and needs 23 additional SHI units in order to meet the 10% SHI threshold. The current zoning for the subject Site allows for residential use, and the proposed residential development would be compatible with surrounding uses.

***(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);***

Based on a site inspection by MassHousing staff, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development and that such use would be compatible with surrounding uses, and would directly address the local need for housing.

It should be noted that the proposed site plan for River Marsh included in the original submittal to MassHousing on January 14, 2017 was significantly redesigned by the Applicant in response to feedback received from the community and MassHousing during the initial review process.

It is also important to note that the changes contained within the current version of the plan address specific issues that were the subject of a previous denial of a Project Eligibility Application by MassHousing for a similar project on the same Site dated September 9, 2005. Specifically, the revised plan has responded to the concerns raised about units located in close proximity to the North River and impacting both wetland and flood-sensitive resource areas. The revised plan, which reduced the number of proposed units from 68 to 56, eliminated the need for a wetland crossing. This significant change to the Project will mitigate impacts on nearby wetlands and result in an enhanced river corridor buffer, over and above the 300-foot setback established by the North River Protective Act.

Additionally, the Project benefits from means of access and egress that were not considered as part of the 2005 plan. The Site now features two (2) points of access and egress. Vehicles may connect to Route 139 east and the nearby Route 3 interchange via Cross Street. This alternative improves onsite safety by reducing the need for vehicles to connect to Route 139 east via a left turn from Water Street.

Many comments from local officials, legislative stakeholders, and residents questioned the anticipated impacts of the conceptual project design, especially with respect to traffic, stormwater management, wetlands protection, and septic system performance. These are all critical areas of local concern and the Comprehensive Permit Rules empower local zoning boards of appeal to impose conditions on the 40B developers that safeguard local health and safety concerns. MassHousing expects the Applicant to engage Pembroke Zoning Board of Appeals in a collaborative manner on all areas of local concern.

The following site plan review findings are made in response to the modified conceptual site plan:

**Relationship to Adjacent Building Typology** (Including building massing, site arrangement, and architectural details):

The surrounding neighborhood is generally residential in character and is predominantly made up of single-family homes. The Developer intends to build 1.5 story, multi-unit, townhouse style residential buildings. The massing of the Project will be mitigated by the efforts to modulate the perceived height, bulk and scale of the proposed residential structures to create an appropriate transition to adjoining neighborhoods.

**Relationship to Adjacent Streets**

The subject is located in a suburban residential neighborhood in North Pembroke, approximately .75 miles west of Exit 12 on Route 3 and .15 miles north of Route 139, close to the Marshfield and Hanover town lines. There appears to be adequate lines of sight for vehicles entering and exiting the proposed Site. In addition, the Applicant has proposed a secondary means of access/egress onto Water Street that provides an alternative route to Route 139 and Route 3.

**Density**

The Applicant proposes to build 56 townhouse condominiums on 49.94 acres, of which approximately 18.54 acres are buildable. The resulting density is 3.02 units per buildable acre, which is acceptable given the proposed housing type and the uses found in the surrounding context.

**Conceptual Site Plan**

The Developer has taken into consideration the site constraints, wetlands and topographical features of the Site to provide safe access and egress for future residents. The Site consists of 49.94 acres of

land, and 18.54 acres are buildable. The site plan largely concentrates development at the Site's central core, leaving large vegetated open areas and some uplands undeveloped. The homes will be clustered together in several areas to create a village-style community and allow for the use of a proposed common sewage disposal system. The wetland resources and the nearby North River are predominant features of the Site that may create open space opportunities, such as walking trails and recreational boating activities.

### **Topography**

The subject property is gently rolling with slight variations in grade where the wetlands are located. The Site is characterized by numerous wetland areas. The topographic features of the Site have been considered in relationship to the proposed Project plans and do not constitute an impediment to development of the Site.

### **Environmental Resources**

The Site is a large parcel with extensive natural resources and undisturbed wetland areas. Extensive wetlands found throughout the Site will limit the development to upland areas identified by the Developer. Development of the Site will require careful attention to current best management Practices to avoid any adverse impacts to the protected wetland resource areas. These resource areas will ultimately serve to break down the perceived massing of the Site, provide visual screening, and surround the residential portions of the Site with natural features. Wetland resources in these areas will be subject to further review by the local Conservation Commission under a Notice of Intent.

***(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);***

The Project appears financially feasible based on a comparison of market sales submitted by the Applicant.

***(e) that MassHousing finds that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's Guidelines, and the Project appears financially feasible and consistent with the Department's Guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;***

The initial pro forma has been reviewed for the proposed residential use, and the Project appears financially feasible with a projected profit margin of 13.73%. In addition, a third-party appraisal commissioned by MassHousing has determined that the "As Is" land value for the Site of the proposed Project is \$1,130,000.

***(f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and***

The Applicant must be organized as a Limited Dividend Organization prior to applying for Final Approval. MassHousing sees no reason this requirement could not be met given information reviewed to date. The Applicant meets the general eligibility standards of the NEF housing subsidy program and has executed an Acknowledgment of Obligations to restrict its profits in accordance with the applicable limited dividend provisions.



***(g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.***

The Applicant controls the entire 49.94-acre Site under a Purchase and Sale agreement with an expiration date of August 30, 2021.