



Massachusetts Housing Finance Agency  
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July 5, 2022

George Defelice  
390 Broadway Road  
Dracut, MA 01826

**Re: Heritage Landing  
Project Eligibility/Site Approval  
MassHousing ID No. 1140**

Dear Mr. Defelice:

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 (“FHLBank Boston”).

You submitted an application with MassHousing pursuant to Chapter 40B. You have proposed to build forty (40) homeownership units (the “Project”) on 15.50 acres of land located on Cow Pond Brook Road (the “Site”) in Groton (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 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. At the request of the Municipality, this time was extended an additional 30 days, for a total of 60 days. The Groton Select Board submitted a letter expressing support for the Applicant’s proposal but identifying areas of concern regarding the proposed development.

The following areas of concern were identified in the letter:

- The Municipality expressed concern that the Site is located in proximity to the Groton Police Department's outdoor shooting range.
- The Municipality expressed concern that additional traffic generated by this Site, as well as other high-level uses, would result in increased congestion on area roadways and pose heightened risks to drivers and pedestrians. The Municipality requested that the Applicant provide a traffic study to allow them to fully assess Project traffic and public safety impacts.
- 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.

### **Community Comments**

In addition to comments from Municipal staff and officials, MassHousing received a letter from the Massachusetts Institute of Technology Haystack Observatory expressing some concerns regarding the proposed Project. The following areas of concern were identified in the letter:

- Increased light pollution generated from the Site may impact the Observatory's dependence on dark skies to conduct research.
- Radio frequency interference may impact the Observatory and future residents' devices such as garage door openers and remote electronic car keys.
- MIT's property abutting the Site contains several trails which are commonly used by the community and public safety concerns are increased with additional residents located nearby, especially young children.
- MIT is concerned that additional traffic generated by the proposed Site will pose additional public safety impacts to area roadways.

### **MassHousing Determination and Recommendation**

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.<sup>1</sup> 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. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Applicant may apply to the Zoning Board of Appeals ("ZBA") for a comprehensive permit. At that time local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with applicable state and local standards and regulations.

Based on MassHousing's site and design review, and considering feedback received from the Municipality, the following issues should be addressed in the application to the ZBA, and the Applicant

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<sup>1</sup> MassHousing has relied on the Applicant to provide truthful and complete information with respect to this approval. If at any point prior to the issuance of a comprehensive permit MassHousing determines that the Applicant has failed to disclose any information pertinent to the findings set forth in 760 CMR 56.04 or information requested in the Certification and Acknowledgment of the Application, MassHousing retains the right to rescind this Site Approval letter.

should be prepared to explore them more fully during the public hearing process:

- Development of this Site will require compliance with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.
- The Applicant should continue to engage with municipal officials in a good-faith discussion regarding design review matters and other Site-related concerns, including, but not limited to issues regarding roadway design and public safety considerations.
- A landscape plan should be provided, including a detailed planting plan, as well as paving, lighting, and signage details, and the location of outdoor dumpsters or other waste receptacles. The landscape plan should also include provisions for snow removal and long-term landscape maintenance options.

MassHousing has also reviewed the application for compliance within the requirements of 760 CMR 56.04(2) relative to Application requirements and has determined that the material provided by the Applicant is sufficient to show compliance.

This Site Approval is expressly limited to the development of no more than forty (40) homeownership units under the terms of the Program, of which not less than ten (10) 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 this letter shall be considered to be expired and no longer in effect unless MassHousing extends the effective period of this letter in writing. 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 FHLBank Boston, 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 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,



Colin M. McNiece  
General Counsel

cc: Jennifer Maddox, Undersecretary, DHCD  
The Honorable Edward J. Kennedy  
Rebecca Pine, Chair, Select Board  
Bruce Easom, Chair, Zoning Board of Appeals

## Attachment 1

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

### Heritage Landing, Groton, MA #1140

MassHousing hereby makes the following findings, based upon its review of the application, and taking into account 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, 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 median income for a four-person household in Groton is \$89,400.

The Applicant submitted a letter of financial interest from Enterprise Bank, a member bank of the FHLBank Boston under the NEF Program.

***(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);***

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 address the local need for housing.

The Town of Groton does have a DHCD-approved Housing Production Plan. According to DHCD’s Chapter 40B Subsidized Housing Inventory (SHI), updated through June 3, 2022, Groton has 224 Subsidized Housing Inventory (SHI) units (5.70% of its housing inventory), which is 169 units short of the statutory minima of 10%.

***(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);***

In summary, based on evaluation of the site plan using the following criteria, MassHousing finds that the proposed conceptual Project design is generally appropriate for the Site. The following plan review findings are made in response to the conceptual plan, submitted to MassHousing:

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

The existing streetscape is protected by locating the proposed duplex-style housing around the end of the cul-de-sac. The cluster style design approach is preferred by the Applicant because it would result in less land disturbance, fewer environmental impacts and less infrastructure associated compared with a traditional subdivision design approach. The cluster approach also allows the Applicant to set aside considerable acreage for the Natural Heritage Area. The Applicant's design approach features architectural detailing, and changes in surface materials, colors, textures and roof lines to create façade divisions to modulate building mass and scale.

**Relationship to adjacent streets/Integration into existing development patterns**

The Site is in the northeast corner of Groton, near the Westford and Tyngsborough town lines. The parcel is 6.2 miles west of the Route 3/40 interchange, 7.0 miles west of the Route 3/113 interchange and 5.2 miles from Groton's central business district. It is on the northern end of Cow Pond Brook Road, named after the adjacent brook. The lower end of the road is improved with relatively modern mid- to slightly above mid-size colonial style residences. The Groton DPW / Highway Department yard, the Town transfer station and a significant solar farm are located on the adjacent, multi-acre parcel directly to the north. And the Cow Pond Brook Fields are located across from the DPW site. The Massachusetts Institute of Technology Haystack Observatory is located on a large, elevated tract of land directly above the Site. Large telescopes, antennas, radar systems and related equipment and multiple buildings are located on this parcel.

**Density**

The Applicant proposes to build forty (40) homeownership units on approximately 15.5 acres, of which 9.59 acres are buildable. The resulting density is 4.17 units per buildable acre, which is acceptable given the proposed housing type.

**Conceptual Site Plan**

The Applicant's proposal consists of twenty-eight (28) single family homes and six (6) duplex-style homes. The proposed site layout considers the pattern of the existing street frontage by relating the height of the buildings to the width of the public way. The buildings are proposed to be clustered together to achieve a greater sense of community and it is the intention of the Applicant to avoid, if at all possible, the buildings from facing one another. The Applicant proposes an open green space in the center of the project with tree planting which will complement the "village" style setting they hope to create.

**Environmental Resources**

The entire Site is within a Natural Heritage & Endangered Species Habitat Area. The endangered species is the Blanding's Turtle. The Applicant is in discussions with representatives of NHESP to examine opportunities to protect the habitat area. Additionally, it is anticipated that land on the opposite side of Cow Pond Brook Road will be permanently restricted from development to provide additional mitigation.

### **Topography**

The Site slopes significantly from the street frontage and then is generally level throughout the remaining acreage. The topographic features of the Site have been considered in relationship to the proposed development plans and do not constitute an impediment to development of the Site.

*(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 sales submitted by the Applicant.

*(e) 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 13.5%. 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 \$480,000.

*(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*

MassHousing finds that the Applicant must be organized as a Limited Dividend Organization. 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 their 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 Site by virtue of a Deed dated April 30, 2001, between James M. Patierno, a Trustee of the Missick Realty Nominee Trust (Seller) and Defcon 1, LLC (Buyer), recorded with the Middlesex North District Registry of Deeds in Book 11670, Page 215.