

Record of Decision
Devens Net-Zero, LLC (Lot AS-10)
Devens MA
Unified Permit
August 30, 2011

1. Applicant:

The applicant is Devens Net-Zero, LLC., 55 Henshaw Street, Boston, MA 02135, on behalf of the owner MassDevelopment, 160 Federal Street, Boston, MA 02110.

2. Premises and Proposed Project:

The applicant is seeking Unified Permit in order to construct four (4) multi-family structures (12 units total) and associated site improvements. It is intended that they serve as a model for energy efficient multi-family sustainable housing. The proposed parcel is located at the northeast corner of Bates and Cavite Streets (Lot AS-10), is approximately 52, 257 st.ft. and has 230 feet of frontage, in compliance with the minimum requirements of 2,500 sq.ft. of land area per unit and 100 feet of frontage as per the Devens Bylaws. The project is proposed in two phases:

Phase 1: Two structures - 6 units total - closest to the abandoned portion of Cavite, including associated parking, utilities, landscaping and drainage improvements;

Phase 2: Two remaining structures 6 units total, to the north of the parcel, including associated parking, utilities, landscaping and drainage improvements.

Building orientation and layout on the lots have been designed to provide maximum southern exposure to take full advantage of passive and active solar strategies. Additional green building techniques will be used to produce a highly energy efficient building.

3. Submission:

The following is a list of exhibits that have been included as part of the record for this Application:

- a. A completed Level Two Unified Permit Application (D11-002) form, dated March 4, 2011.
- b. Stormwater Report – Applicant Devens Net Zero LLC, Project name: Devens Sustainability Housing; dated 3/3/11, prepared by Ronald Tiberi, PE No. 34773;
- c. Site Plan package entitled “Devens Sustainable Housing” prepared by various parties, including the following sheets:
 - Sheet A-3 entitled “Building Elevations”, scale ¼”=1’0”, dated 10-20-10, revised through 4-20-11; prepared by Cambridge Seven Associates, Inc. 1050 Mass. Ave. Cambridge, MA 02138.
 - Sheet 1 of 1 entitled “Level 1 Subdivision Lot AS-10”, scale 1”=20’, dated 03-01-11; prepared by WSP Sells 155 Main Dunstable Road, Nashua, NH 03060;
 - Sheet S-1 (1 of 4) entitled: “Existing Conditions”, scale 1”=20’, dated 10-13-10; prepared by WSP Sells 155 Main Dunstable Road, Nashua, NH 03060 and FSL Associates, 358 Chestnut Hill Ave., Boston, MA 02135.
 - Sheet S-2 (2 of 4) entitled: “Proposed Site Conditions Lot AS-10”, scale 1”=20’, dated 10-13-10, revised through 8-19-11; prepared by WSP Sells 155 Main Dunstable Road, Nashua, NH 03060 and FSL Associates, 358 Chestnut Hill Ave., Boston, MA 02135.
 - Sheet D-1 (3 of 4) entitled: “Erosion Control, Grading and Drainage Plan”, scale 1”=20’, dated 2-21-11, revised through 8-19-11; prepared by WSP Sells 155 Main Dunstable

Road, Nashua, NH 03060 and FSL Associates, 358 Chestnut Hill Ave., Boston, MA 02135.

- Sheet D-2 (4 of 4) entitled: "Details", scale 1"=20', dated 2-22-11, revised through 3-21-11; prepared by WSP Sells 155 Main Dunstable Road, Nashua, NH 03060 and FSL Associates, 358 Chestnut Hill Ave., Boston, MA 02135.
 - Sheet L-1 (Landscape Plan) entitled "Devens Sustainable Housing", scale 1"=20', dated 3-3-11, revised through 4-20-11; prepared by Emanouil Brothers, Inc.
 - Sheet L-2 (Landscape Details) entitled "Devens Sustainable Housing", scale 1"=20', dated 3-3-11, revised through 4-20-11; prepared by Emanouil Brothers, Inc.
- d. Determination of Completeness, dated March 7, 2011
 - e. Public Hearing Notice Fax to Town Clerks of Ayer, Harvard, Shirley, Lancaster and MassDevelopment, from Peter Lowitt, dated March 7, 2011;
 - f. Public Hearing Legal Notice Fax to Nashoba Publications, from Peter Lowitt, dated March 22, 2011 – to be published March 25 and April 1, 2011.
 - g. Copies of Legal notices from March 25, 2011 and April 1, 2011 from Ayer Public Spirit.
 - h. Public Hearing Notice Fax to Community Service Cable Committee, from Peter Lowitt/Kate Clisham, dated April 11, 2011;
 - i. Memo dated March 7, 2011 from Peter Lowitt to Towns of Ayer, Harvard and Shirley Board of Selectman and Planning Offices; Subject: Bates and Cavite Multi-Family Housing Units (notification of Public Hearing on April 26, 2011 at 6:45PM);
 - j. Memo dated April 28, 2011 from Peter Lowitt to Abutters and Interested Parties; Subject: Subject: Bates and Cavite Multi-Family Housing Units (notification of Public Hearing on April 26, 2011 at 6:45PM);
 - k. Public Hearing Notice to Secretary of State, from Peter Lowitt, dated April 11, 2011
 - l. Certified Abutters List from Devens Board of Assessors, dated April 28, 2011, for property located at Lots AS-10 Bates and Cavite Street.
 - m. Certified Mail Return Receipts for application and plan deliveries to Ayer, Harvard and Shirley, received by towns on 3-8-11. Certified Mail return receipts for public hearing notices to all abutters – various dates.
 - n. Staff Report dated April 22, 2011 Re: Multi-family Sustainable Housing Project – Cavite and Bates;
 - o. Updated Staff Report dated May 25, 2011 Re: Multi-family Sustainable Housing Project – Cavite and Bates;
 - p. Devens Sustainable Housing Schematic Design Color Scheme, dated January 7, 2011 (1 page);
 - q. Revised list of waivers and revised drainage calculations – response to BSC comments, dated April 21, 2011.
 - r. Additional Material in Support of Site Plan Revised March 16, 2011, by Ron Tiberi, PE. (9 pages)
 - s. Letter to William Anderson, dated March 23, 2011, re: Bates and Cavite Multi-Family Housing, Devens Massachusetts Level II Permit Application Review Comments; from Neil Angus (6 pages);
 - t. MassDevelopment letter dated March 25, 2011 to Peter Lowitt, from George Ramirez, re: MassDevelopment Board of Directors recommendation for discontinuance of a portion of Cavite Street (2 pages);
 - u. Letter to William Anderson from Massachusetts Historical Commission, dated February 24, 2011, re: finding of no adverse impact for proposed project (1 page);

- v. BSC Peer Review Response Comment letter dated 3/16/11 from Dave Varga to Neil Angus (6 pages);
- w. Cavite and Bates Review Criteria 974 CMR 3 – 5-24-11 (with Staff Comments);
- x. BSC Peer Review Response Comment letter dated 4/7/11 from Dave Varga to Neil Angus (13 pages);
- y. BSC Peer Review Response Comment letter dated 4/26/11 from Dave Varga to Neil Angus (21 pages);
- z. LEED for Homes Sustainable Sites Portion of Checklist;
- aa. Letter dated March 14, 2011 from MassDevelopment to Peter Lowitt re: MassDevelopment's commitment to offsite sidewalk and traffic calming improvements on Cavite Street.
- bb. Note to file dated 1-25-11 re: initial design review meeting with MassDevelopment;
- cc. Letter dated April 4, 2011 from Ron Tiberi to Neil Angus re: response to March 16, 2011 BSC review comments;
- dd. Record of Decision draft dated May 31, 2011.
- ee. Comment Letters dated 6/10/11 from Jim McCormick - 18E Bates Street and Karen MacDonald 18E Bates Street to William Marshall, DEC Chairman.
- ff. Response to comment letters by Mass Development dated 6-21-2011 and addressed to Jim McCormick and Karen MacDonald, 18 E Bates Street, copied to the DEC.
- gg. Photograph of Bates Street Service Road submitted 5/31/2011
- hh. Compilation of questions from the public hearing by Neil Angus dated June 2, 2011.
- ii. Draft Record of Decision dated June 28, 2011.
- jj. Devens Enterprise Commission Request for Extension of Public Hearing and/or Time Limits for Review received May 31, 2011 and signed by William Anderson of Devens Net Zero requesting extension of public hearing to the evening of June 28, 2011.
- kk. Aerials of the neighborhood, site plan, and photos of the Bates Service Road in a powerpoint format dated 6/8/2011
- ll. Extension request from Devens Net Zero LLC to the DEC requesting extension of public hearing from June 28, 2011 to July 21, 2011 in an email dated 6/20/11.
- mm. Devens Enterprise Commission Request for Extension of Public Hearing and/or Time Limits for Review received July 21, 2011 requesting continuance of public hearing until August 30, 2011 signed by Geoffrey Caraboolad for Devens Net Zero.
- nn. Cavite and Bates Review Criteria 974 CMR 3 dated August 2, 2011 (with staff comments)
- oo. Cavite and Bates Review Criteria 974 CMR 3 dated August 30, 2011 (with staff comments).
- pp. Staff Report to Commission from Peter Lowitt and Neil Angus dated 8-24-11
- qq. Draft Record of Decision approval and draft denial dated August 30, 2011
- rr. Mullin Rule Affidavit for Paul Routhier signed August 29, 2011
- ss. E-mail correspondence as follows:

Date	From	To	Subject
3/20/11	Peter Lowitt	Russ Smith	Re: new application (e-mail 1 of 2)
4/8/11	Russ Burke	Neil Angus	Re: Bates and Cavite Street
3/9/11	Russ Burke	Peter Lowitt	Cost Proposal for the CaviteBates MF Housing
4/26/11	Rhonda Spector	Neil Angus	Metric Hearing (extension request)
4/5/11	Jim Moore	Neil Angus	Metric Plans Review
5/2/11	Dave Varga	Ron Tiberi	Re: Bates and Cavite Street Sustainable Housing
4/26/11	Kate Clisham	Louise Kelly	Re: Cavite and Bates
5/16/11	Neil Angus	Rhonda Spector	Re: Project fee breakdown
5/24/11	Dave Varga	Neil Angus	Fwd: Alternative Pavement evaluation
5/27/11	Neil Angus	Bill Anderson	Re: Cavite Adams residential development
5/26/11	Neil Angus	Rhonda Spector	FW: Bates Street Housing

5/27/11	Chief Garrity	Peter Lowitt	Re: Fire Department Approval
5/27/11	Neil Angus	Chief Garrity	Re: Devens Net Zero Site Plan
6/13/11	Geoff Caraboolad	Neil Angus	Re: Meeting this morning
6/20/11	William Anderson	Neil Angus	Re: Devens Net Zero LLC extension request
6/15/11	Rhonda Spector	Neil Angus	Re: Bates Service Road Issues
6/20/11	Peter Lowitt	Bill Marshall	Re: Net Zero Units on Bates
6/15/11	Bill Anderson	Neil Angus	Letter to DEC
6/21/11	Rhonda Spector	Bill Anderson	Re: Devens housing - responses to letters from neighbors
7/22/11	Robert Kaye	Neil Angus	DEC Permit Approval for Metric
7/20/11	Rhonda Spector	Neil Angus	Letter from Metric regarding the DEC meeting
7/19/2011	Rhonda Spector	Neil Angus	Re: Devens net zero
7/19/2011	Rhonda Spector	Neil Angus	Re: Devens net zero (1)
7/21/11	Bill Anderson	Neil Angus	Re: Extension Request Form
8/19/11	William Anderson	Neil Angus	Re: Revised Drawings
8/22/11	Neil Angus	William Anderson	Re: Revised Drawings
8/22/11	William Anderson	Neil Angus	Water Main
8/26/11	William Anderson	Neil Angus	FW: Drainage

4. Unified Permit Components and Actions:

The Unified Permit request includes a two-phased Site Plan approval for the development of four (4) multi-family structures (12 units total) and associated site improvements.

5. Process:

The application was submitted on March 4, 2011 and a Determination of Completeness was issued on March 7, 2011. Copies of the application were received by the surrounding Towns on March 8, 2011. Legal notices were placed in Nashoba Publications on March 25, 2011 and April 1, 2011. Due to a clerical error, Certified Mail notices were not sent out to all abutters until April 28, 2011. The Applicant subsequently submitted a request for extension of the public hearing and decision timeframe beyond the 75 days. The public hearing was opened on April 26, 2011 and the DEC accepted the extension request from the Applicant and continued the hearing to May 31, 2011 to allow for all abutters to be properly notified. The 30-day Town comment period expired on April 8, 2011. No comments were received. The public hearing opened on May 31, 2011 and continued to June 28, 2011 at the request of the applicant and opened on that date and, also at the applicant's behest, further continued to July 26, 2011 and at that date as requested by the applicant; continued again until August 30, 2011. The public hearing was reopened on August 30, 2001 and closed that same evening.

6. Waivers

The Applicant requested the following waivers:

1. 974 CMR 3.04(3)(a)1.a. - Principle parking serving the site shall not intrude frontward of the building façade.

This regulation limits the amount of parking between the front building façade and the street. Due to solar orientation, the building façade does not face the street and there is no proposed parking between the building and the street.

2. 974 CMR 3.04(3)(a)(1)d. - Landscape islands shall serve a functional purpose for stormwater infiltration and evapotranspiration and should be used whenever possible to reduce runoff, increase groundwater recharge, and increase screening and shade with trees.

This waiver applies only to the two (2) landscape islands on the south side of the project in order to preserve solar gain on south side of structures.

3. **974 CMR 3.04(3)(a)(1).f - Bicycle storage facilities shall be provided on-site.**
Bicycle storage will occur inside the units.
4. **974 CMR 3.04(6)(a)3.a. - Vertical granite curb required where sidewalks abut driveways or parking areas.**
5. **974 CMR 3.04(6)(a) 4.a-f. - Site lighting requirements.**
As a small-scale residential project, existing streetlights are deemed sufficient and each unit will have lights at both front and back doors.
6. **974 CMR 3.04(6)(a)5.b – Dumpsters shall not be located forward of the front façade of the building.**
Due to the solar orientation of the buildings, the front façade is on the side of the building. The proposed dumpster is forward of the front façade, however it is adequately screened and contained.
7. **974 CMR 3.04(8)(h)2. – Shade trees required around the perimeter of parking at a ratio of one tree per 25 lineal feet of parking lot perimeter.**
Due to the solar orientation of the buildings, shade trees along the Cavite side of the proposed parking do not meet this requirement. This waiver applies only to the parking lot on the southern end of the site closest to Cavite (Phase I).
8. **974 CMR 3.04(2)(a) - Rear setback requirement of 25 feet.**
This waiver reduces the rear yard setback to from 25 feet to 10 feet to minimize impacts to the open space land adjacent.

The DEC voted to approve waivers **2, 4, 7, and 8**, deny waivers **3 and 5**. Waivers **1 and 6** were determined not to be required as part of this application.

7. Findings

The DEC made the following findings:

1. The proposed lot size and frontage are in accordance with the minimum requirements for infill development in the Residential II District.
2. The alternative pavement construction specifications proposed by the Applicant are sufficient given the anticipated traffic and usage.
3. Regarding the approval criteria listed in 974 CMR 3.03(2):
 - (a) The Site Plan, with conditions and waivers, complies with 974 CMR 3.00 and with the applicable provisions of the By-Laws.
 - (b) The development lies on a lot that will be recorded at the Registry of Deeds (Level 1 Lotting Plan administratively approved by the Land Use Administrator);
 - (c) The application is Complete.
 - (d) All drives, parking lots, loading areas, paths, sidewalks, and streets are designed to provide for safe vehicular and pedestrian travel.

- (e) Access and site circulation will enable prompt fire, police, and emergency response, with the condition that appropriate signage be provided for the emergency access road.
- (f) Adequate capture, treatment, infiltration and discharge of stormwater and surface water runoff and compliance with applicable portions of the "Devens Stormwater Pollution Prevention Plan", will be achieved with the proposed conditions of approval.
- (g) Connections with utility, power and communication systems available in the abutting infrastructure have been shown and approved by the Mass Development Managers of Engineering and Utilities.
- (h) Facilities required under the Water Resources Protection Bylaw and the related Design Standards have been included on the plans and in the conditions of approval.
- (i) The plans demonstrate compliance with Landscaping Design Standards for plant materials, planting strips, screening, and preservation of existing specimen trees and wooded areas with the waivers granted and proposed conditions of approval.
- (j) A Wetlands Order of Conditions is not required for this site.
- (k) Industrial Performance Standards do not apply to this site.
- (l) Sufficient parking for current needs has been provided.
- (m) Traffic control measures have been included on the plans and as a condition of approval.
- (n) The proposed development is not required to participate in the Devens traffic management association.
- (o) Adequate water supply exists in terms of quantity, quality, and water pressure for domestic needs and fire protection.
- (p) Connection to sanitary sewers will be made.
- (q) Building designs will meet the minimum standards as established by Mass Development for the district in which the lots are located.

8. Conditions:

The DEC voted to impose the following conditions:

1. Wherever "Applicant" is referenced in the Conditions set forth herein, it refers to the Applicant, its successors and assigns.
2. Prior to commencing any intrusive earth work within Devens (due diligence, construction of otherwise) all personnel to be on site shall view an Unexploded Ordnance/Munitions of Explosive Concern (UXO/MEC) video briefing provided by the Devens Fire Department. This video is intended to instruct on-site personnel as to how to visually recognize UXO/MEC if found during construction activities and to provide instructions on what to do if potential/suspected UXO/MEC is observed.

3. The Applicant shall comply with the By-Laws, Article III, Section K 1. a., which provides that “no soil, loam, sand, gravel, or other earth materials shall be permanently removed from any lot within Devens, except in accordance with an approved Level Two Development Permit.
4. Waivers granted as part of this project shall be included on the final plans, prior to DEC endorsement.
5. All landscaping shall be maintained in healthy condition. Any dead or damaged landscaping shall be replaced promptly. The applicant shall be required to submit a letter confirming a one-year guarantee of all approved landscaping once installed. Long-term maintenance shall be addressed in the condominium association documents.
6. The Applicant shall notify the DEC in writing seven or more days prior to the completion of the following construction milestones:
 - a) completion of the site grading and site work;
 - b) complete installation of site stormwater management facilities and other subsurface utilities;
 - c) completion of all site improvements as shown on the approved site plan;
 - d) installation of trees and other major landscaping features.

The LUA shall schedule a site inspection by the DEC’s consultants or allow the submission of a red-lined print stamped by a RLS or PE, as appropriate.

7. The Applicant shall submit final as-built plans in accordance with the DEC As-Built policy, prior to the issuance of a Certificate of Occupancy for any unit.
8. Plans shall be revised to meet all final engineering peer review comments including but not limited to stormwater management and grade change revisions, prior to endorsement by the DEC.
9. Any excess fill from this development site shall not be disposed of offsite without DEC administrative approval of a plan and appropriate temporary controls and permanent stabilization.
10. All required erosion controls and tree protection fencing shall be installed prior to the commencement of any construction activities on the Site and maintained in areas where construction is being conducted. Contact DEC Staff for inspection. Additional controls shall be implemented at the discretion of the DEC or its Staff.
11. Electric, water and sewer connections shall be provided to each unit prior to issuance of a Certificate of Occupancy for each unit. All existing utilities within the proposed lots that are not being reused shall be properly abandoned or removed. Mass Development shall provide water main connection to the Applicant’s water service.
12. The Applicant shall submit a design review approval letter from MassDevelopment prior to the issuance of any building permits.

13. MassDevelopment shall improve the sidewalk at the corner of Cavite and Adams Circle, including ADA accessibility requirements, as well as provide a bump out traffic calming improvement where Bates meets Cavite Street, as per the March 14, 2011 letter from MassDevelopment.
14. A copy of the Condominium Association Manual shall be submitted to the DEC prior to the issuance of a certificate of occupancy. This manual shall include, but not be limited to an explanation of the governing structure of the association, protection of stormwater management features, care and maintenance responsibilities for all common areas (IPM plan, landscape and parking lot maintenance, trash disposal, stormwater maintenance, etc.). Final copies shall be provided to each unit owner.
15. Offsite treatment and conveyance for drainage from the proposed development directed into the Bates and Cavite Street rights-of-way shall be provided. MassDevelopment shall ensure Cavite and Bates drainage system is functional prior to permitting the Applicant to connect to it for this project.
16. Bioretention area construction shall be in accordance with MA DEP Stormwater Standards Volume 2 BMP's.
17. The Applicant is required to pay all outstanding Peer Review consultant fees prior to the issuance of a building permit.
18. Parking lot lighting conforming to 974 CMR 3.04 shall be provided on the final plans prior to endorsement by the DEC.
19. The Applicant shall provide the required signage, pavement markings and plan details for the gravel emergency access drive to the satisfaction of the Devens Public Safety Officer. Access across the gravel emergency access drive shall be maintained at all times and plowed by the Applicant during snow events. Plans shall be revised to include details for the gravel drive, berm and signage prior to DEC endorsement of the plans.

9. Decision:

The DEC voted August 30, 2011, after the Public Hearing was closed, to grant four of eight waivers requested (two waivers were deemed not necessary and two denied), to issue findings, including that the application complied with Approval Criteria in 974 CMR 3.03(2), to impose Conditions, and to approve the site development plan for Devens Net-Zero, LLC on Lot AS-10 at the northeast corner of Cavite Street and Bates St., Devens, MA.

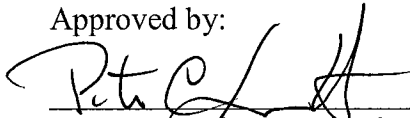
10. Building Permit

The Building Commissioner, along with the Electrical and Plumbing Inspectors, must review architectural/structural drawings and specifications and approve them in writing, prior to issuance of a building permit for each unit. All requirements in the Massachusetts Building Code, the Massachusetts Sanitary Code, and those of the Devens Fire Chief must be met. When this approval is obtained, the building permit may then be integrated with this Site Plan Record of Decision and Level One Lotting Plan; together they will constitute the Unified Permit for Devens Net-Zero, LLC at the northeast corner of Bates and Cavite (Lot AS-10), which will, in turn, allow construction to commence.

11. Permit Duration

In accordance with 974 CMR 1.10, unified permits shall remain in effect so long as the approved activities are commenced within six months of the date of the DEC or the LUA's written decision and completed within two years. It is further noted that there exists a thirty-day "reconsideration period" during which an applicant, a Town, or an aggrieved person may request the DEC reconsider its action (By-Laws, Article IV, Sections C through F). Work performed during this period, which begins on August 31, 2011 and terminates September 30, 2011, is "at risk". Final plans must be submitted for endorsement by the Commission by March 1, 2012.

Date: 8-31-2011


Approved by:

Peter C. Lowitt, AICP, Director
Devens Enterprise Commission

Certification

Middlesex, SS

I certify the above is a true action and record of the Devens Enterprise Commission and that Peter C. Lowitt, Devens Land Use Administrator/Director, is empowered by the Devens Enterprise Commission to sign this Record of Decision on its behalf.

8-31-2011
Date


Kathryn Clisham, Notary
My Commission expires 3/16/2018

