



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

January 16, 2008

DRAFT RECORD OF DECISION

PROJECT NAME : 1021 Kingston Place
PROJECT MUNICIPALITY : Kingston
PROJECT WATERSHED : South Coastal
EOEA NUMBER : 14126
PROJECT PROPONENT : Thorndike Development Corporation
DATE NOTICED IN MONITOR : November 12, 2007

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (ENF) and hereby **propose to grant** a waiver that will allow the proponent to proceed with design and permitting of Phase 1 of the project prior to completing the Environmental Impact Report (EIR) process for the entire project.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project consists of the design and construction of a 1.8 million gross square foot (sf) mixed-use development in Kingston and construction of access roads including a slip ramp to Route 3 southbound. The Expanded ENF indicates that the project is proposed consistent with the Kingston Smart Growth District, an overlay district adopted pursuant to M.G.L. c. 40R Smart Growth Zoning. The development is proposed on a 109-acre parcel adjacent to the MBTA commuter rail station. At full-build, the project will include 50,000 square foot (sf) of retail space, 250,000 sf of office space and 730-residential units. The project will include significant roadway improvements including geometric and signalization improvements along Smiths Lane at the Route 3 interchange (Exit 8) and northbound and southbound ramps and extension and reconstruction of Cranberry Road.

The project is proposed in two phases. Phase 1 consists of the off-site roadway improvements. Phase 2 consists of the site development. The proponent proposes to construct the roadway improvements prior to the occupancy of the development.

The project site is bounded by the MBTA commuter rail station to the north, Marion Drive and existing commercial development to the northwest, a sand and gravel pit to the south, Smelt Brook and its associated buffer zone to the southwest, and the Davis parcel to the northwest. The site has been altered significantly through sand and gravel removal operations. According to the Department of Fish and Game's (DFG) Natural Heritage and Endangered Species Program (NHESP), a portion of the project site is mapped as Priority Habitat of Rare Species. The project is located within the 2nd Brook Water District. The roadway improvements will extend from Smith's Lane to Marion Drive via the extension of Cranberry Road and include the construction of a loop ramp that will extend from Cranberry Road around the existing transfer station and the Kingston Wastewater Treatment Facility (WWTF) until its connection with Route 3 southbound. The current alignment of Cranberry Road crosses Smelt Brook and associated riverfront area and runs adjacent to the capped landfill. Wetland resource areas are located to the northeast of the proposed Route 3 slip ramp.

MEPA Jurisdiction and Required Permits

The project is undergoing MEPA review and subject to preparation of a mandatory EIR pursuant to Section 11.03 (1)(a)(2) and (6)(a)(6) because it requires a state permit and consists of creation of ten or more acres of new impervious surfaces and generation of 3,000 or more new average daily trips (adt) on roadways providing access to a single location.¹ The project requires a Sewer Connection Permit, a Major Post Closure Use Permit, Major Modification Permits (for the Landfill and for the Transfer Station) and a modification of a Small Handling Facility from the Department of Environmental Protection (MassDEP). It requires a Conservation and Management Permit from the Natural Heritage and Endangered Species Program (NHESP) and a Dam License from the Department of Conservation and Recreation (DCR). It requires a Construction and Access Permit from the Massachusetts Highway Department (MassHighway) and will require a land transfer between MassHighway and the Town of Kingston. The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site greater than one acre. Also, it requires numerous local permits and approvals including an Order of Conditions from the Kingston Conservation Commission (and hence a Superseding Order of Conditions from MassDEP in the event the local Order is appealed).

Phase 1 requires a Major Post Closure Use Permit, Major Modification Permits (for the Landfill and for the Transfer Station) and a modification of a Small Handling Facility from the Department of Environmental Protection (MassDEP). It requires a Construction and Access Permit from the Massachusetts Highway Department (MassHighway) and includes a land

¹ The EENF indicates that the project is subject to a mandatory EIR threshold pursuant to Section 11.03 (6)(a)(2) because it includes construction of a new interchange on a completed limited access highway. The project, as proposed, consists of a slip ramp to Route 3 and is not considered an interchange for the purpose of MEPA review.

transfer between MassHighway and the Town of Kingston. The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over one acre. Also, it will require an Order of Conditions from the Kingston Conservation Commission.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that may have significant environmental impacts and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction exists over land alteration, traffic/transportation, air quality, wetlands, drainage, rare species, wastewater, water supply and solid/hazardous waste.

Summary of Potential Environmental Impacts

Potential environmental impacts for Phase 1 are associated with alteration of 2.1 acres of land, the creation of 2.1 acres of new impervious area and alteration of 21,177 sf of riverfront area. Potential environmental impacts for the entire project are associated with the alteration of 17.8 acres of land, the creation of 57.7 acres of new impervious area, alteration of 42,667 sf of riverfront area, generation of 12,410 average daily vehicle trips (adt), use of 263,700 gallons per day (gpd) of water (including 28,700 gpd for irrigation) and generation of 235,000 gpd of wastewater.

Summary of Proposed Mitigation

As noted previously, the project consists of redevelopment of an existing gravel pit with a mixed use development in close proximity to the MBTA commuter rail station. The EENF identifies a range of measures to ensure adequate environmental protection. The project proponent has identified measures to avoid, minimize and mitigate project impacts including the following:

- Avoidance of direct wetland alterations;
- design, construction and maintenance of a stormwater management system consistent with the MassDEP Stormwater Management Policy and LEED-ND standards;
- design and construction of a project consistent with LEED-ND design standards;
- permanent protection of 42 acres of open space;
- leaching fields for groundwater discharge of sewage and for stormwater recharge to Smelt Brook;
- development of a Transportation Demand Management (TDM) program to minimize single occupancy vehicle (sov) trips associated with the project including transit subsidies;
- construction of bicycle and pedestrian facilities and trails to connect with existing land uses and open spaces;
- and measures to minimize construction period impacts including use of on-road ultra low sulfur diesel fuel (ULSD) to minimize air quality impacts.

Waiver Request

The proponent has requested a waiver that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR for the entire project. Consistent with this request, an Expanded ENF was submitted and it was subject to an extended review period. At the request of the project proponent, the review period was extended an additional 14 days. The EENF identifies the environmental impacts of the project and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts. The EENF includes a discussion of the project's consistency with the criteria for granting a Phase 1 Waiver, it includes an alternatives analysis for roadway improvements, 25% design plans for the Preferred Alternative, identification of environmental impacts associated with Phase 1, a detailed traffic study and identification of measures to avoid, minimize and mitigate impacts. The alternatives analysis identifies 12 alternatives that were previously reviewed by the Town and MassHighway.

Criteria for a Phase 1 Waiver

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and
- (b) not serve to avoid or minimize Damage to the Environment.

The MEPA regulations at 301 CMR 11.11(4) state that, in the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR, I shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant;
 - (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
 - (c) the project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated;
- and**
- (d) the agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Findings

I have carefully considered the comments that express concern with the issuance of a Phase 1 Waiver. While I appreciate the commenters' perspectives, I find that subject to conditions described below, the proponent has met the tests for a Phase 1 Waiver. My determination is based on the information submitted by the Proponent, consultation with the relevant state agencies, and consideration of comment letters received. As further outlined below, I have determined that issuance of the Phase 1 Waiver would not serve to minimize Damage to the Environment, that adequate and unconstrained infrastructure exists to support the project, that the project is severable, and that agency actions on Phase 1 can be conditioned to ensure compliance with MEPA.

1. Requiring the preparation of an EIR in advance of undertaking Phase 1 would cause undue hardship and would not serve to minimize Damage to the Environment:

As noted previously, the EENF identifies the environmental impacts of the project, includes an alternatives analysis and 25% design plans for Phase 1 improvements, a traffic study and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts. The alternatives analysis identifies 12 alternatives that were previously reviewed by the Town and MassHighway. These alternatives included provision of full on and off ramps to Route 3, redesign of the Independence Mall access routes and geometric and signalization improvements (stand alone and in conjunction with access to Route 3) and were based on their consistency with state and federal design criteria, transportation benefits, environmental impacts and feasibility. The EENF includes a more detailed analysis of three of these alternatives (Alternative 2, Alternative 9 and Alternative 11) which were selected based on input from MassHighway.

State agency actions associated with Phase 1 are limited to traffic and solid waste. The Proponent has provided an extensive amount of information on the potential impacts and proposed mitigation for the construction and operation of the project in the EENF. The EENF contained sufficient information to allow state permitting agencies to understand the environmental consequences of their permit decisions.

Comments from the Executive Office of Transportation and Public Works (EOT) indicate its support of the Preferred Alternative and indicate that it has no objections to the waiver request. Comment letters from other state agencies, town officials, the Old Colony Planning Council (OCPC) and the Jones River Watershed Association (JRWA) also indicate support for the Phase 1 Waiver or indicate that they have no objections to it being granted, predicated on the basis that additional design and environmental analysis will be provided through the EIR process. MassDEP comments do not identify any additional information that should be provided regarding changes to the landfill and transfer station prior to permitting.

Given the foregoing, and subject to the conditions described above, I find that a requirement to complete MEPA review prior to initiating the permit process for Phase 1 is not necessary in order for the proponent to demonstrate that it will avoid, minimize, and mitigate potential

Damage to the Environment to the maximum extent practicable, and that a requirement to do so would therefore cause undue hardship and would not serve to minimize Damage to the Environment.

The granting of a Phase 1 Waiver is being conditioned to enhance the review process and ensure the environmental impacts of the project are minimized. These conditions include:

- Construction of Phase 1 cannot be initiated until completion of the MEPA review process for the entire project.
- Additional design and analysis of the project, its environmental impacts and mitigation measures will be included in the EIR.
- The proponent must prepare draft Section 61 Findings for each agency action outlining all the proposed mitigation measures associated with Phase 1 for consideration during permitting.
- The entire project will be subject to the EEA Greenhouse Gas Policy requiring analysis of greenhouse gas (GHG) emissions and identification of measures to minimize GHG emissions. I strongly encourage the proponent to incorporate on-site clean, renewable energy into the project design.
- The proponent must demonstrate to MassDEP and the Conservation Commission how the state and local stormwater standards will be achieved.

Therefore, the requirement for completion of an EIR prior to Phase 1 is not necessary and would not serve to avoid or minimize Damage to the Environment. According to the comments from EOT and the OCPC the project will provide regional transportation benefits.

2. The potential environmental impacts of Phase 1, taken alone, are insignificant.

The granting of the Phase 1 Waiver request will not result in any environmental impacts because it is structured to allow the proponent to initiate design and permitting of the project. Actual construction, if permitted and approved, would not begin until the conclusion of the MEPA review process. The project is designed to avoid wetlands areas and does not require any direct wetland alterations. Widening of the Smelt Brook Crossing can be accomplished without significant impact because of the sizing of the existing culvert. Subsequent MEPA review and the permitting process will provide sufficient opportunities to address outstanding issues and the development of additional, specific mitigation.

Based on the foregoing, I find that the potential environmental impacts of Phase 1, taken alone, are insignificant.

3. Ample and unconstrained infrastructure facilities and services exist to support Phase 1.

The project is designed to alleviate existing congestion and poor access to the MBTA commuter rail station as well as provide access to the site. It does not require any infrastructure to support it. The extension of Cranberry Road does include impacts to Town facilities.

Based on the foregoing, I find that ample and unconstrained infrastructure exists to support Phase 1.

- 4. The project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated.**

Phase 1 is a self-contained project that is not dependent upon completion of the overall project. Its impacts can be permitted and mitigated separately from the full-build of the project. Completion of the alternatives analysis has thoroughly evaluated options for addressing existing congestion, providing access to the commuter rail station and providing access to the project site. Phase 2 of the project is dependent upon the completion of Phase 1 and the roadways will include water and wastewater infrastructure to support Phase 2.

The alternatives analysis included in the EENF identifies a broad range of alternatives for the ability to address the project purpose and avoid and minimize environmental impacts in addition to other criteria.

Based on the foregoing, I find that Phase 1 of the project is severable and does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated.

- 5. The agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.**

The project requires a Construction and Access Permit from MassHighway and several permits from MassDEP related to the alterations to the landfill and the transfer station. These permits can be conditioned to ensure that the full-build of the project complies with MEPA and its implementing regulations. The proponent has indicated that it will not initiate construction until the MEPA review process for the entire project is complete. In addition, the proponent must prepare draft Section 61 Findings outlining all the proposed mitigation measures associated with Phase 1 for consideration during permitting.

Based on the foregoing, I find that the agency actions on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Conclusion

I have determined that this waiver request has merit, and am issuing this DROD, which will be published in the next edition of the Environmental Monitor on January 23, 2008 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on February 6, 2008. During this period, the proponent should confirm that it accepts the conditions of the Phase 1 Waiver. In addition, the proponent should clarify whether any approval or easement is required from the MBTA for Phase 1 of the project. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). I hereby **propose to grant** the waiver requested for this project, which will allow the proponent to proceed with design and permitting of Phase 1 of the project as identified in the EENF prior to preparing a mandatory EIR for the entire project, subject to the above findings and conditions.

 January 16, 2008

Date

 Ian A. Bowles

Comments Received:

1/9/08 Department of Environmental Protection/Southeast Regional Office (MassDEP/SERO)
 1/9/08 Department of Fish and Game/Natural Heritage and Endangered Species Program (DFG/NHESP)
 1/15/08 Executive Office of Transportation (EOT)
 1/9/08 Massachusetts Bay Transportation Authority (MBTA)
 1/9/08 Old Colony Planning Council
 1/9/08 Town of Kingston/Office of the Kingston Town Planner
 1/9/08 Town of Kingston/Board of Selectmen
 11/27/07 Town of Kingston/Board of Sewer Commissioners
 1/8/08 Town of Kingston/Board of Sewer Commissioners (second letter)
 12/28/07 Town of Kingston/Conservation Commission
 1/8/08 Weston&Sampson for the Town of Kingston
 1/9/08 Coler & Colantonio Inc. for the Kingston Board of Sewer Commissioners
 1/10/08 Jones River Watershed Association
 12/10/07 Helen Gavin, Mildred Leonardi and Jennifer DiRico
 1/7/08 Helen Gavin (second letter)
 1/8/08 Mildred and William Leonardi (second letter)
 12/20/07 Dan Sapir

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