



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>

April 27, 2007

RECORD OF DECISION

PROJECT NAME : Hillside at 495 Center
PROJECT MUNICIPALITY : Northborough
PROJECT WATERSHED : Assabet
EOEA NUMBER : 12916
PROJECT PROPONENT : Northborough Land Realty Trust /The
Gutierrez Company
DATE NOTICED IN MONITOR : February 6, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I hereby **grant** a Phase I Waiver with conditions allowing the construction of a 91,500 sf portion of Phase 2 of the Hillside @ 495 project to proceed pending the preparation of a Final Environmental Impact Report (FEIR) for the Full Build project.

Project Description

In November 2002, the proponent submitted an Environmental Notification Form (ENF) to MEPA proposing the two-phase development of a 260,000 square foot (sf) warehouse building (Phase 1), 6,700 parking spaces, and approximately 2,000,000 (sf) of office space in four buildings (Phase 2), and associated infrastructure on a 175 acre-site south of Bartlett Street and east of Lyman Street in Northborough. The project will consume a total of approximately 172,040 gallons per day (gpd) of water and will generate approximately 156,400 gpd of wastewater flow. The proponent proposes to discharge the wastewater generated from the Phase 1 portion of the project (6,400 gpd) to an on-site Title V septic system. The proponent proposes to discharge the wastewater generated from Phase 1I (150,000 gpd) to the Town of Northborough's municipal sewer collection system for treatment at the City of Marlborough's Westerly Wastewater Treatment Facility.

Using the Institute of Traffic Engineers Trip Generation land use codes 750 for Office Park and 150 for Warehouse/Distribution, the project is estimated to generate a combined total of approximately 22,720 vehicle trips on the average weekday. An air quality mesoscale analysis for ozone will be needed for this project to assess the total volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions associated with all project-related vehicle trips.

MEPA Jurisdiction

The project is undergoing review and requires preparation of an EIR pursuant to sections 11.03 (1)(a)(1) and (1)(a)(2) of the MEPA regulations because the project requires state permits and will involve the direct alteration of 50 or more (111.7 acres total) acres of land and the creation of more than 10 acres (91.6 acres total) of new impervious surfaces. The project as currently designed also requires a Groundwater Discharge Permit from the Department of Environmental Protection (MassDEP) and an Order of Conditions from the Northborough Conservation Commission (and hence a Superseding Order from DEP if the local Order is appealed). I note that although the proposed project will generate more than 3,000 new vehicle trips per day (vtd) (22,720 total), and provide more than 1,000 new surface parking spaces (6,700 total), it does not appear to require a Highway Access Permit from the Massachusetts Highway Department (MassHighway). The project also requires a Construction Dewatering Permit, a Fossil Fuel Emission Permit and a Groundwater Discharge Permit from MassDEP. The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over five acres and for a Construction Site Dewatering Discharge Permit from the U.S. Environmental Protection Agency (EPA).

Project History

Environmental Notification Form (ENF)/First Phase 1 Waiver Request

As part of the November 2002 ENF submittal, the proponent requested a Phase 1 Waiver to allow the construction of a 260,000 sf warehouse with 326 surface parking spaces and 26 loading docks on a 25-acre portion of the project site abutting Lyman Street (Phase 1 - Lyman Street Warehouse), in advance of the preparation of an EIR for the full build-out of the site. The proponent's Phase 1 Waiver request was granted in a Record of Decision issued in March 2003.

The majority of the Phase 1 project site was disturbed by past sand and gravel extraction activities. According to the ENF, the Lyman Street warehouse portion of the 175 acre-site project site is located within a designated Area 1 Wellhead Protection Area for the Town of Northborough's Groundwater Protection Overlay District (GPOD), and within a DEP designated Interim Wellhead Protection Area (IWPA). These designations were established to protect the recharge areas surrounding an existing municipal water supply well site located a short distance to the west of the Phase 1 site. Phase 1 required a Groundwater Discharge Permit from MassDEP, and an Order of Conditions from the Northborough Conservation Commission.

Work performed in Phase 1, which was completed in 2005, included construction of a single-story 260,000 sf warehouse and distribution facility, 326 surface parking spaces, 26 loading docks, an on-site septic system, a stormwater management system, and a comprehensive erosion and sedimentation control program. The Phase 1 - Lyman Street warehouse project resulted in the creation of more than 10.0 acres of impervious surface area, and the generation of approximately 1,300 new vehicle trips per day. Phase 1 work involved construction activities within the 100-foot buffer zone for Bordering Vegetative Wetlands (BVW), but did not impact any wetland resource areas located within the project site.

Notice of Project Change (NPC)/Second Phase I Waiver Request

In June 2006, the proponent submitted a Notice of Project Change (NPC) proposing a number of modifications to the Phase 2 development program for the. Specifically, the proponent proposed to reduce the amount of proposed new office space and to incorporate a second warehouse/distribution center (the A. Duie Pyle Company warehouse) into the overall project development program. Phase 2 now entails the construction of a total of 1,525,000 sf of new building space consisting of office, research & development space to be located in three separate buildings, and a separately located 116,600 sf warehouse/distribution center building with a total of approximately 5,846 total parking space (315 spaces for the warehouse distribution center, and 5,531 spaces for the office space), related utilities and stormwater management infrastructure, and traffic mitigation roadway improvements. The implementation of the new project development program as described in the NPC will result in an increase to land alteration (approximately 12,600 sf), and minor decreases to impervious surface area, potable water demand, wastewater flows, parking, and traffic generation, as compared with the development program presented in the ENF. The NPC also included a second Phase I Waiver request to construct 91,500 sf (78 percent) of the 116,600 sf A. Duie Pyle warehouse facility, thereby allowing its construction to proceed in advance of the preparation of an Environmental Impact Report (EIR) for the entire project. The Certificate on the NPC issued in August 2006 denied the proponent's request for a Phase I Waiver.

Notice of Project Change and Phase I Waiver Request

As part of the November 2002 ENF submittal, the proponent requested a Phase I Waiver (1st Phase I Waiver) to allow the construction of the proposed 260,000 sf warehouse facility with 326 surface parking spaces and 26 loading docks on a 25-acre portion of the project site abutting Lyman Street (Phase 1 - Lyman Street Warehouse), in advance of the preparation of an EIR for the full build-out of the site. The Certificate on the Phase I Waiver required the proponent to include in the EIR an Area Traffic Planning Study, prepared in conformance with the EOE/EOC Guidelines, for the full-build scenario, along with the Area Traffic Planning Study for the Hillside-at-495 project that, according to the ENF, the proponent had voluntarily agreed to complete. The Phase 1 development was completed in early 2005. In June 2006, the proponent submitted a Notice of Project Change (NPC) to the MEPA Office proposing a reduction in the amount of proposed Phase 2 office development plan from 2,000,000 sf to 1,525,000 sf, and to incorporate approximately 116,600 sf of additional warehouse/distribution space to be located in three separate office buildings, and a separately located warehouse/distribution center building with approximately 4,960 surface parking spaces, and related utilities and stormwater management infrastructure, and associated traffic mitigation roadway improvements.

The project change resulted in an increase to land alteration (approximately 12,600 sf), and minor decreases to impervious surface area, potable water demand, wastewater flows, parking, and traffic generation.

The June 2006 NPC submittal also included a second Phase I Waiver (2nd Phase I Waiver) request to construct 91,500 sf (78 percent) of the 116,600 sf warehouse/distribution facility (A. Duie Pyle Warehouse facility) currently proposed as part of the Phase 2 development program, thereby allowing its construction to proceed in advance of the preparation of an Environmental Impact Report (EIR) for the Hillside @ 495 Center project and the Full-Build scenario. The Certificate on the NPC/2nd Phase I Waiver (August 2006) denied the proponent's Phase I Waiver.

The DEIR submitted for this project (February 2007) included the proponent's Phase I Waiver request (3rd Phase I Waiver) to construct 91,500 sf (78 percent) of the 116,600 sf Duie Pyle warehouse/distribution facility currently proposed as part of the Phase 2 development program, thereby allowing its construction to proceed in advance of the preparation of the Final Environmental Impact Report (FEIR) for the Hillside @ 495 Center project.

Phase I Waiver Review

Section 11.11 of the MEPA regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds 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.

In the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with phase one of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

- (a) the potential impacts of phase one of the project, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support phase one of the project;
- (c) the project is severable, such that phase one 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 on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to the commencement of any other phase of the project.

Findings

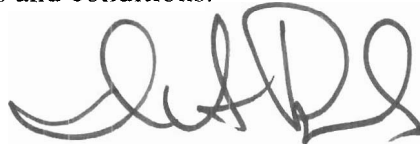
I have carefully reviewed this 3rd Phase I Waiver Request and supporting documentation, written comments and comments received at the scoping session.

1. The project is severable, since the proposed construction of 91,500 sf (78 percent) of the 116,600 sf Duie Pyle warehouse/distribution facility does not require or presume any action relative to the future Phase II Office development.
2. As described in the DEIR document, the proposed Duie Pyle warehouse/distribution facility has been designed to avoid direct alteration of bordering vegetated wetlands (BVW). I find that this NPC/3rd Phase I Waiver request contains sufficient information upon which to make a determination that the potential impacts of the proposed Duie Pyle warehouse/distribution facility construction activities on wetland resource areas, taken alone, are insignificant.
3. The estimated wastewater flows (2,950 gpd) for the proposed warehouse/distribution facility will be conveyed from the project site in Northborough to the City of Marlborough's Westerly Wastewater Treatment Facility (Westerly WWTF). According to comments received from MassDEP, the Westerly WWTF has sufficient treatment capacity to serve the wastewater flows from the Duie Pyle warehouse project. MasDEP has requested that the proponent install and maintain a wastewater flow meter at the Northborough/Marlborough municipal boundary line to monitor the Town of Northborough's flows conveyed to the City of Marlborough's Westerly WWTF. The proponent also needs to demonstrate to MassDEP that the City of Marlborough has approved the proponent's proposed sewer connection from the Hillside @ 495 Center project to the Westerly WWTF.

I adopt these comments as my own and will condition my approval of this 3rd Phase I Waiver Request on the proponent's installation of a wastewater flow meter, and demonstration of the City of Marlborough's sewer connection approval as described by MassDEP. I also note and concur with MassDEP's comments on the DEIR submitted for this project that expressed concern for the management of wastewater flows from the proponent's extensive commercial and residential development projects in Northborough and Marlborough. In the Secretary's Certificate issued on the DEIR, I have required the proponent to include in the FEIR a detailed explanation of how the wastewater flows have been allocated to date and will be allocated between all of the proponent's Full-Build projects (completed, under construction, permitted, and other) and the Town of Northborough and the City of Marlborough. The FEIR should demonstrate that the proposed methods for the discharge and treatment of the wastewater flows generated by the proponent's Full-Build development projects located in Northborough and Marlborough are feasible.

I find that this NPC/3rd Phase I Waiver request contains sufficient information pertaining to the potential post-development wastewater impacts to make a determination that the potential impacts resulting from the construction of the Duie Pyle warehouse/distribution facility, taken alone, are insignificant.

Based on these findings, it is my judgment that the Phase I Waiver request has merit, meets the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I grant the 3rd Phase I Waiver subject to the aforementioned findings and conditions.



April 27, 2007
Date

Ian A. Bowles, Secretary

Comments received on the DROD: None

EOEA #12916 ROD
IAB/NCZ/ncz