



# The Commonwealth of Massachusetts

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May 17, 2006

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## CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS ON THE DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME	: Legacy Place
PROJECT MUNICIPALITY	: Dedham
PROJECT WATERSHED	: Charles River
EOEA NUMBER	: 13677
PROJECT PROPONENT	: WS Development Association
DATE NOTICED IN MONITOR	: April 10, 2006

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (Draft EIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00).

### Standard and Purpose of MEPA Review

Section 11.08(8)(b) of the MEPA Regulations requires me to find a Draft EIR adequate even if certain aspects of the project or issues require additional technical or descriptive analysis, so long as I find that “the draft EIR is generally responsive to the requirements of 301 CMR 11.07 and the Scope.” I have fully examined the record before me, including but not limited to the Scope issued; the Draft EIR filed in response; and the numerous comments entered into the record. While many of the comments have raised valid concerns, I find that the Draft EIR has addressed the issues within MEPA jurisdiction to a sufficient extent that the project may advance to the stage of a Final EIR. However, there are still outstanding issues within MEPA jurisdiction, as described below and in the comments received. The Final EIR should address these issues, and respond to the comments received that are within MEPA jurisdiction. The Final EIR should present additional narrative and technical analysis where necessary to respond to the substantive comments received.

### Project Description and MEPA Jurisdiction

As described in the Draft EIR, the proposed project consists of the construction of 734,000 square feet (sf) of mixed uses, including 532,000 sf of retail/restaurant space and a grocery store, a 91,685 sf cinema complex, an 85,240 sf office building, and a parking deck with 3,000 spaces on a 47 acre site in Dedham. This project has been enlarged from 676,000 sf since the Environmental Notification Form (ENF) was reviewed. The existing cinema and other properties on the site will be demolished. Access to the site will be via Route 1A and Enterprise Drive. Based on the information provided in the Draft EIR, the project is expected to generate an additional 13,471 new vehicle trips, for a total of 25,900 vehicle trips on an average weekday.

The project is undergoing review and requires the preparation of a mandatory EIR pursuant to section 11.03(6)(a)(6) and (7) of the MEPA regulations. The project will generate more than 3,000 new vehicle trips per day and provide greater than 1,000 new parking spaces at a single location. The project also triggers a MEPA review threshold (although not mandatory EIR thresholds) related to land. The project requires an Access Permit from the Massachusetts Highway Department (MHD), a Sewer Connection Permit from the Department of Environmental Protection (DEP), and an Order of Conditions from the Dedham Conservation Commission (and hence a Superseding Order from DEP if the local Order were appealed).

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/air quality, wetlands, drainage, and wastewater issues.

### General

The Final EIR should include a copy of this certificate and a copy of each comment received. The proponent should circulate the Final EIR at a minimum to those parties submitting written comments on the Draft EIR, and to any state agency from which the proponent will seek permits.

### Comments

The Final EIR should respond fully to the substantive comments received. The Final EIR should present additional technical analysis and/or narrative as necessary to respond to the concerns raised, not otherwise raised in this Certificate. The proponent should circulate a copy of the Final EIR to any party submitting written comments on the Draft EIR. The Final EIR should contain a copy of this Certificate and of each comment received.

### Project Description

The Final EIR should expand on the project description included in the Draft EIR. The Final EIR should present a full updated description of the project, which should include a clear description on lighting, grading, landscaping, and buffers between the site and adjacent uses. The Final EIR should pay particular attention to buffers both during the construction and operational periods. The Final EIR should also include updated existing and proposed grading plans.

### Alternatives

In the ENF Certificate I directed the proponent to analyze the no-build alternative to establish baseline conditions and also evaluate alternative site layouts of the proponent's preferred alternative in order to arrive at a site layout that minimizes overall impacts. The Draft EIR did not present analysis and only made statements that the "the proponent rejects the No-Build Alternative" and that there are "no other alternatives or alternative layouts that accomplish the Objective of the Project." (Draft EIR on page 32) The Draft EIR in its response to comments on the ENF Certificate states that "multiple site configuration have been considered during the due diligence phase[.]" (Draft EIR on page 137). However, this analysis is not presented. The Final EIR must present a detailed analysis on the no-build alternative to establish baseline conditions and also evaluate alternative site layouts of the proponent's preferred alternative in order to arrive at a site layout that minimizes overall impacts in order to comply with the requirements of MEPA. I am also requiring that the Final EIR present, as one alternative site layout, a reduced build alternative to address the apparent deficit in water supply as described in comments by the Dedham-Westwood Water District, the Town of Westwood's Board of Selectmen, the Charles River Watershed Association, the Water Supply Citizens Advisory Committee and DEP. In addition, the Final EIR must address with detailed analysis the comments received on this topic from both the ENF and the Draft EIR review.

A central purpose of MEPA review is to ensure that a project proponent studies feasible alternatives to a proposed project; fully discloses environmental impacts of a proposed project; and incorporates all feasible means to avoid, minimize, or mitigate Damage to the Environment as defined by the MEPA statute. After completion of the EIR process, the state permitting agencies must then issue substantive decisions on whether or not to permit those aspects of the project within their respective jurisdictions. If permits are issued, the state agencies must incorporate the information in the EIR process into their required Section 61 Findings, thus formalizing the mitigation commitments contained in the EIR.

### Project Permitting and Consistency

The Final EIR should provide an update of the local and state permitting processes for the proposed project. In accordance with section 11.01 (3)(a) of the MEPA regulations, the EIR should also discuss the consistency of the project with any applicable local or regional land use plans, and address the requirements of Executive Order 385 (Planning for Growth). The Final EIR must include more information on water and wastewater demand, which is described in

greater detail in the Water Supply/Wastewater Section below, and how this project will be consistent with local plans. The town of Dedham has received an approval to join the Massachusetts Water Resource Authority (MWRA) Waterworks Division (EOEA #13337) to purchase water with an average of 100,000 gallons per day (gpd), to more consistently meet its water demand. This project, which was not included in the original study for seeking membership in the MWRA, estimates that this project would require 117,280 gpd. The Final EIR must consider the impact that this project will have on the town's water supply, taking into account the cumulative demand for water from recent and proposed projects and the MWRA allocation. The Final EIR must also address specific methods to achieve water savings to meet these increased demands.

### Land Alteration

The project as currently designed will create almost 10 acres (9.59 acres) of new impervious surfaces. The Draft EIR has not proposed any reduction of imperviousness from the plan in the Environmental Notification Form (ENF), even though nearly 76 percent of the site would be impervious at full build. This is a 21 percent increase above currently developed conditions. I reiterate that the proponent should strive to decrease impervious land surfaces in order to preserve existing infiltration as much as possible. The Final EIR should consider reductions in the number of paved parking spaces and in the size of these parking spaces can be effective in reducing imperviousness. It also may be possible to use alternate, porous paving materials, particularly in areas of low use parking. The project site is also located within the medium stressed Charles River basin, according to the Water Resources Commission's Stressed Basins in Massachusetts report, which emphasizes the need for recharge of groundwater in medium and highly stressed basins. Infiltration of stormwater in stressed basins is a requirement in the NPDES Phase II Stormwater Permit.

### Transportation

The Draft EIR included a transportation study prepared in conformance with the EOEA/EOT Guidelines for EIR/EIS Traffic Impact Assessments that identified mitigation measures for areas where the project will have an impact on traffic operations. The proponent has committed to the installation of an interconnected traffic signal system along Providence Highway between Elm Street, Enterprise Drive and the Dedham Plaza driveway. New traffic signals were installed at Dedham plaza approximately five years ago along with conduit that would allow for future interconnection to the north and south, the project proponent should discuss with MHD the extent of the conduit and the possibility of extending the interconnection commitment north to the intersection of Providence Highway and Eastern Avenue.

The Final EIR should revise the future traffic analysis to reflect the Westwood Station development that is planned along University Avenue in Westwood. Traffic destined to and from Westwood Station will impact traffic along Providence Highway and at the I-95/Route 128

interchange with Route 1/Providence Highway.

The Final EIR should update the mitigation measures proposed at the Providence Highway/Elm Street intersection to address the short weaving distance between the I-95/Route 128 interchange and the Providence Highway/Elm Street intersection. The proponent should evaluate alternative configurations at this intersection due to the proposed access to the site and increase in traffic along Providence Highway related to their project. The Final EIR should also address the issue of mitigation at the Route 1 A/Elm Street intersection. While this intersection is projected to operate at favorable levels of service under the 2010 Build Conditions, the intersection has experienced a higher than average accident rate and therefore, the project proponent should propose additional mitigation at this location. The Final EIR should contain appropriate mitigation measures at these locations including the installation of a new traffic control system and possible geometric improvements. I advise the proponent to consult and work closely with MHD on appropriate mitigation measures.

The Final EIR should include conceptual plans for the proposed roadway improvements that should be of sufficient detail, preferably 80-scale, to verify the feasibility of constructing such improvements. The conceptual plans should clearly show proposed lane widths and offsets, layout lines and jurisdictions, and the land uses (including access drives) adjacent to areas where improvements are proposed. Any proposed mitigation within the state highway layout must conform to MHD standards, including but not limited to, provisions for lane, median and shoulder widths, and bicycle lanes and sidewalks.

#### Public Transportation

In order to encourage pedestrian trips from the adjacent residential developments, Jefferson at Dedham and the Fairfield Green projects, as well as the Dedham Corporate commuter rail station, the project proponent has incorporated walking paths into their site layout plan that will connect to Rustcraft Road. The nearby residential developments complement the retail and office nature of the proposed development and encourage smart growth principles. In addition, the project proponent has worked with the Town of Dedham and the Massachusetts Bay Transportation Authority (MBTA) regarding a pedestrian link to the commuter rail station. The project proponent should continue to work with the MBTA regarding the potential of bus service to the site and design the site to accommodate transit amenities including bus stops and bus turnouts. The Final EIR should provide an update on these discussions with the MBTA to modify the bus route. I encourage the proponent to commit to subsidizing MBTA passes and require its lessees to do so also. The Final EIR should also contain information about any proposed bicycle lanes.

#### Wetlands

As proposed in the Draft EIR on Figure 2, bordering vegetated wetlands (bvww) alteration is

shown to be 2,139 square feet. Wetlands replication is estimated at 7,301 square feet on the same drawing, for a 3.4:1 replication rate. The text of the Draft EIR indicates that the alteration would be about 2,301 square feet. The Final EIR should clarify the amount of direct bvw alteration and the area of buffer zone impact also should be quantified. The Final EIR should demonstrate that proponent has minimized impacts to the maximum feasible extent.

#### Stormwater/Drainage

The Final EIR should provide additional information in order to demonstrate the stormwater management system complies with the Stormwater Management Policy and Standards. The Final EIR should include full size stormwater system design plans at a readable scale. The watershed plan with the Draft EIR did not show the infiltration basin, catch basins, conveyance system, or particle separators. The Final EIR should include design specifications and sizing information for the particle separators/water quality inlets, which have been rated to remove 70 percent total suspended solids, to demonstrate that this rating is appropriate for this application.

I remind the proponent that pollution prevention and source control measures are required for compliance with the total suspended solids Standard 4 in the Stormwater Management Policy. The source control and pollution prevention plan for this project should specify that snow shall not be plowed toward the wetlands and that snow shall be managed in accordance with the DEP's Snow Disposal Guidelines. The snow disposal plan should show the location on or off-site where snow will be plowed or disposed. The plan also should commit to using the minimum amount of deicing and abrasive agents, and include catch basin stenciling to discourage illicit discharges to storm drains on site. In addition a schedule for parking lot sweeping should be timed to occur a minimum of twice per year in about October and March for removal of leaves and sand.

The Draft EIR discusses infiltrating stormwater runoff despite the fact that the soils are estimated to be Hydrologic Class D, which have limited recharge capacity. The effort to recharge stormwater, even though soil conditions are unfavorable, recognizes the importance of infiltration within the medium stressed Charles River basin. The Water Resources Commission's *Stressed Basins in Massachusetts* report emphasizes the need for recharge of groundwater in medium and highly stressed basins. The Final EIR should discuss any collaboration with the town of Dedham to provide for infiltration of stormwater on municipal properties with suitable soils to assist the town with compliance of the NPDES Phase II Stormwater Permit. Infiltration of stormwater in stressed basins is a requirement in the NPDES Phase II Stormwater Permit.

#### Water Supply/Wastewater

The water demand estimate for this project is 117,280 gpd. Since the ENF review, the town of Dedham has received an approval to join MWRA Waterworks Division. The MWRA has approved the purchase of 100,000 gallons per day only, and this single project requires more

water than the MWRA's entire allocation to the town. The Final EIR must consider the impact that this project will have on the town's water supply, taking into account the cumulative demand for water from recent and proposed projects and the MWRA allocation. The Final EIR also should make specific commitments to offset the project's water use, through water conservation, retrofitting, and a low flow appliance rebate program within the town of Dedham.

The Draft EIR has identified deficiencies in the sewer system in the vicinity of the project site. However, there is insufficient information in the Draft EIR to understand the extent of these deficiencies. The Final EIR should provide a complete description of the existing sewer system serving the project site, and a description of the sewer system for the proposed project that highlights changes in the system that will be necessary for this project. A schematic plan of the sewers in the area of the site should show at least the locations of the system deficiencies, the sewer line(s) and connection(s) for the project, and the proposed sewer pumping station. The Final EIR also should explain what the Rustcraft Road sewer replacement project is, when it will be completed, and how this sewer improvement project affects the proposed project. The Draft EIR has not included commitments to infiltration and inflow (I/I) mitigation in the Section 61 Finding associated with the sewer connection/extension permit. The Final EIR should contain these commitments. I strongly advise the proponent to consult with DEP and provide documentation showing that there is a current wastewater discharge of 25,191 gpd from the project site and that the new flow from the project will, in fact, be 81,427 gpd as stated in the Draft EIR. If this is the case, the proponent will need to remove 324,908 gpd of I/I. A commitment for the appropriate volume of I/I removal should be included in the Section 61 Finding in the Final EIR.

The Final EIR should include specific information on conservation measures, including water reuse and what educational and training programs will be put in place to ensure the success of both conservation and stormwater management programs. The project's participation in the town's I/I removal program should be discussed in the Final EIR. The Dedham Westwood Water District (DWWD) is developing a conservation fee program for development to offset the increased demand on the public water supply system. The proponent should consult with the DWWD and strongly consider committing to participation in the water conservation fee program.

#### Construction Period

I commend the proponent's commitment to use diesel particulate filters to control emissions. I also encourage the proponent to have contractors be required to use on-road low-sulfur diesel (LSD) fuel in their off-road construction equipment. On-road LSD fuel has a sulfur content of approximately 500 parts per million (ppm) in contrast to lower grade off-road diesel fuel which has a sulfur content of 3,000 ppm. The use of LSD fuel, in conjunction with after-engine emission controls, can reduce particulate matter by an additional 25 percent beyond that obtainable with after-engine controls only.

Mitigation / Section 61 Findings

The Final EIR should contain a summary of all mitigation measures to which the proponent is committed, as well as Proposed Section 61 Findings for use by the state agencies. The Proposed Findings should reflect any new commitments made during the course of the Final EIR process. The Finding also should identify the parties responsible for implementing these measures, and an approximate schedule for completing the work after the environment is impacted. Inclusion of a tabular presentation of the mitigation measures that will be implemented for the project simplifies the preparation of Section 61 Findings, by assembling in order the information required in 310 CMR 11.07 (6)(k).

May 17, 2006

Date

  
Stephen R. Pritchard

## Comments received:

05/09/06	Department of Environmental Protection, NERO
05/10/06	Water Supply Citizens Advisory Committee
05/10/06	Dedham-Westwood Water District
05/10/06	MA Executive Office of Transportation, MHD
05/10/06	Charles River Watershed Association
05/11/06	Town of Westwood, Board of Selectmen

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