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July 28, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
ON THE  
PHASE I FINAL RECORD OF DECISION

PROJECT NAME : Gloucester Commons  
PROJECT MUNICIPALITY : Gloucester  
PROJECT WATERSHED : Gloucester Harbor  
EOEA NUMBER : 13779  
PROJECT PROPONENT : Sam Park & Company  
DATE NOTICED IN MONITOR : April 26, 2006

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **grant a waiver** to allow Phase I of the project as defined in this Record of Decision to proceed to the state permitting agencies pending preparation of an Environmental Impact Report (EIR) for the project as a whole. In a separate Certificate issued on June 16, 2006, I have allowed the proponent to prepare an EIR for the project as a whole and laid out the scope for the required EIR.

Project Description

According to the Expanded Environmental Notification Form (EENF), the proposed project entails the phased construction of a mixed-use development that will include approximately 180,000 square feet of retail uses and a 120-unit senior care facility with ancillary commercial uses on the ground floor. The project site is located on a 36-acre site bounded by the Route 128 Extension to the north, the Fuller Elementary School to the west, residential areas to the southwest and east, and a public playing field to the south. The project consists of the two distinct phases. The proposed Phase I will include the 120-unit senior care facility and 20,000

square feet of retail space, as well as approximately 250 parking spaces and all site access road improvements. Phase II will complete the project at a later date with 160,000 square feet of additional retail space and 700 parking spaces. According to information included in the EENF, Phase I of the project is expected to generate 1,519 vehicle-trips on an average weekday, and Phase II will generate 6,479 for a total of 7,998 vehicle trips on an average weekday.

### Jurisdiction

This project is subject to a mandatory EIR pursuant to Sections 11.03(1)(a)(2), 11.03(6)(a)(6), 11.03(2)(b)(1), and 11.03 (3)(b)(d) of the MEPA regulations because it will create ten or more acres of impervious area, generate 3,000 or more new vehicle trips, and 5,000 of more square feet of bordering or isolated vegetated wetlands. The project will require a Sewer Connection/Extension Permit from the Department of Environmental Protection (DEP) and an Access Permit from the Massachusetts Highway Department (MHD). Although not indicated in the EENF, DEP has stated that the project may require a 410 Water Quality Certificate. It must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site. The project requires an Order of Conditions from the Gloucester Conservation Commission and a Comprehensive Permit from the Gloucester Zoning Board of Appeal pursuant to M.G.L. Chapter 40B (and hence an approval from the Massachusetts Housing Appeals Committee if the local Comprehensive Permit is appealed). Because the proponent is seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to all aspects of the project that may have significant environmental impacts.

### Waiver Request

On April 26, 2006, the proponent requested that I grant a waiver to allow Phase I of the project to proceed in advance of completion of the EIR. The waiver request was submitted with the EENF, and it was discussed at the consultation/scoping session that was held on May 24, 2006. As proposed, Phase I consists of 120 units of senior care facility and 20,000 square feet of stand alone retail, as well as approximately 250 parking spaces and all access road improvements.

### Criteria for Waiver

Section 11.11 of the MEPA Regulations provide that I may grant a waiver from any provisions of the MEPA regulations not specifically required by the MEPA statute upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid Damage to the Environment. Further, when a proponent seeks to proceed with Phase I of a project pending the preparation of an EIR for the project as a whole, the Phase I waiver request must meet additional tests including a test of insignificance and a test of severability.

### Criteria for a Phase I Waiver

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 undue hardship to the proponent, unless based on delay in compliance by the proponent; and b) not serve to minimize or avoid damage to the environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to Phase I of the project prior to preparing an EIR, this finding shall be based on one or more of the following circumstances: 1) the potential environmental impacts of Phase I are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase I; 3) the project is severable, such that Phase I does not require the implementation of any other future phases; and 4) the agency action on Phase I will contain conditions that ensure due compliance with MEPA.

### Findings:

1. The potential impacts of the project for Phase I are insignificant. The impacts on land, wetlands and traffic do not trigger mandatory EIR thresholds.
  - Phase I will create less than 6.7 acres of new impervious surface area;
  - The proponent has consulted with MHD on both Phase I and Phase II to minimize the traffic impacts of Phase I and Phase II. Phase I will generate approximately 1,519 new vehicle trips during a typical 24 hour period and create 250 parking spaces on the site.
  - MHD supports the Phase I Waiver with the following conditions:
    1. the Loop Road access for the overall development onto Route 128 will be limited to right-in/right-out;
    2. the project proponent will complete the “loop road” connection to Blackburn Circle as part of the Phase I development;
    3. the proponent will provide acceleration and deceleration lanes on the Route 128 Extension, and geometric modifications to eliminate and/or discourage illegal maneuvers at the Route 128/Loop Road intersection; and
    4. the proponent will provide geometric modifications and/or traffic calming measures at Blackburn Circle to reduce traveling speed along the Route 128 Extension.

I concur with all four of the conditions MHD has proposed, which will also be subject to MHD’s review and approval.
2. Ample and unconstrained infrastructure currently exists to support Phase I.

- 3. The project is severable. Construction of Phase I does not require completion of Phase II.
- 4. The permitting associated with Phase I can include sufficient conditions to ensure compliance with MEPA prior to implementation of later phases.
- 5. The proponent must submit an EIR addressing the wastewater, wetlands/water quality, stormwater, archaeology, transportation, and construction impacts of the entire project, Phase I and Phase II, and propose appropriate mitigation.

Based on these findings, it is my judgment that the waiver request has merit, meets the tests established in Section 11.11 of the MEPA Regulations, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I grant the waiver subject to the aforementioned findings and conditions. I published the Draft Record of Decision in the July 10, 2006 issue of the *Environmental Monitor* for a fourteen-day comment period. No comments were received during the comment period.

July 28, 2006

Date



Stephen R. Pritchard

No comments received.

SRP/ACC/acc