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July 28, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
ON THE  
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Scotland Heights I & II  
PROJECT MUNICIPALITY : Haverhill  
PROJECT WATERSHED : Merrimack River  
EOEA NUMBER : 13822  
PROJECT PROPONENT : **Scotland Heights Realty Trust**  
DATE NOTICED IN MONITOR : June 21, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of a mandatory Environmental Impact Report (EIR).

As described in the Expanded Environmental Notification Form (EENF), the project consists of two subdivisions known as Scotland Heights I and Scotland Heights II. Scotland Heights I is a 42-lot single family home subdivision and Scotland Heights II is a 41-lot single family subdivision. Each subdivision was proposed and permitted locally under separate applications, as the land developed as part of Scotland Heights II was made available through bankruptcy proceedings subsequent to the local approval of Scotland Heights I.

Despite being subject to a mandatory EIR requirement, Scotland Heights I is now fully constructed and occupied, and Scotland Heights II is an active construction site and approximately 60% complete. This EENF was filed as an "after the fact" filing; the proponent requests a full waiver from the MEPA process. The project has been subject to several local enforcement actions under the Wetlands Protection Act, and is currently subject to a Department of Environmental Protection Unilateral Administrative Order ("Order") (UAO-NE-06-9002-13). This Order was issued on July 6, 2006 to Scotland Heights Realty in association with ongoing discharges of wastewater from the project site without appropriate permitting documents.

The purpose of MEPA review is to ensure that state permitting agencies have sufficient information to determine that through their permitting actions they have avoided, minimized and mitigated damage to the environment to the maximum extent practicable. Moreover, MEPA review is intended to provide the opportunity for the proponent to identify required agency actions and describe and analyze how the project complies with applicable regulatory standards and requirements. The project's history and current status illustrate the obvious benefits of such approach. As discussed below, the waiver request is denied and an EIR is required.

The project includes the construction of several subdivision roadways (Blye Road, Snow Road, Scotland Heights Road and Tersolo Road), installation of water and sewer mains, alteration of 15,070 square feet of isolated wetlands, alteration of 373 square feet of bordering vegetated wetlands, and the construction of stormwater management basins. The 87.8 acre property is located in a residential area of Haverhill, proximate to the Methuen Town Line, the Merrimack River, and wooded open space. The project site is characterized by steep grade changes, portions of which have been altered as part of the initial construction of the subdivision. It appears that the project site was previously wooded in nature with some wetland areas interspersed throughout in low-lying areas prior to construction. The project is located within a Critical Supporting Watershed for the Greater Merrimack Core Habitat, as identified in the report, Living Waters, Guiding the Protection of Freshwater Biodiversity in Massachusetts, 2003.

This project is undergoing MEPA review and is subject to the preparation of a mandatory EIR pursuant to Section 11.03(1)(a)(2) because it requires a state permit and will create more than 10 acres of impervious surfaces. The project is also subject to MEPA review as it will alter more than 5,000 square feet of isolated vegetated wetlands (301 CMR 11.03(3)(b)(1)(d)). The project requires a Sewer Connection Permit and a 401 Water Quality Certification from DEP, an Army Corps of Engineers Category II Programmatic General Permit, a National Pollutant Discharge Elimination System Construction General Permit from EPA, and an Order of Conditions from the Haverhill Conservation Commission. As this is an "after the fact" filing, the proponent has already obtained a NPDES permit and has an Order of Conditions for site work associated with Scotland Heights II. It is my understanding that the ACOE Category II permit has been reviewed, but may not be issued until a Water Quality Certificate is issued by DEP. According to the DEP comment letter, the project exceeds the threshold for a sewer extension/connection permit. As the project proponent is not seeking public funding for this development, MEPA jurisdiction is limited to the subject matter of required or potentially required state permits. This includes stormwater, land alteration, wastewater, and wetlands.

Potential environmental impacts are associated with the alteration of approximately 48 acres of land, creation of 12 acres of impervious surfaces, use of 34,238 gallons per day (gpd) of water and generation of 27,390 gpd of wastewater. The proponent states that it will provide mitigation for existing (approved) wetland alterations via compensatory planting and seeding activities, which will be comprised of wetland trees, shrubs, and herbaceous plant species, similar to that exhibited in the resource areas prior to disturbance. The proponent has also provided funds in association with the City of Haverhill's requirements for off-site improvements to water and sewer infrastructure as part of the local subdivision approval process.

### Waiver Request

In accordance with Section 11.05 (7) of the MEPA regulations, the proponent has submitted an EENF with a request that I grant a full waiver of the EIR.

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. Section 11.11 (3) provides that, in the case of the waiver of a mandatory EIR review threshold, the Secretary shall at a minimum base the finding required in accordance with Section 11.11 (1)(b) on a determination that: a) the Project is likely to cause no Damage to the Environment; and b) ample and unconstrained infrastructure facilities and services exist to support the Project or those aspects of the Project within subject matter jurisdiction.

The Expanded ENF received an extended comment period pursuant to Section 11.06 (8) of the MEPA regulations. The Expanded ENF identifies wetland resource areas, includes mitigation planting plan for impacted isolated wetlands, provides a project history, and includes stormwater calculations. Subsequent to the site consultation meeting the applicant submitted supplemental information regarding stormwater calculations and wetlands at the request of the DEP. Based on a review of the Expanded ENF and written comments, I find that the project does not meet the standards for a full waiver of an EIR. While information has been provided detailing the design of stormwater basins associated with Scotland Heights II and limited information regarding stormwater management within Scotland Heights I, the filing does not contain sufficiently detailed information to support a finding that the project will cause no Damage to the Environment, particularly given the project's history of noncompliance with applicable local and state regulatory requirements.

The following Scope is intended to identify additional analysis and information necessary to complete MEPA review and ensure that proposed mitigation achieves the goal of adequately avoiding, minimizing and mitigating impacts.

### **SCOPE**

The EIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate.

### Project Description

The EIR should include a thorough description and timeline of construction of both Scotland Heights I and Scotland Heights II. The EIR should contain an "existing" conditions plan and supporting narrative depicting topography, drainage patterns, elevations, access roads, etc., prior to the construction of Scotland Heights I and II. A proposed conditions plan and narrative should be provided depicting finished grades, house lots (clearly demarcating structures that have been built and remain to be built), retaining walls, utilities, access roads, stormwater

management basins, easements, etc. Plans should be provided at a reasonable scale and clearly delineate all applicable resource areas including wetlands and their associated buffer zones, isolated wetlands, wetland replication areas, and utilities. The EIR should include a site circulation plan illustrating how motor vehicles, pedestrians and cyclists will be accommodated on the site.

### Project Permitting and Consistency

The EIR should briefly describe each state permit required for the project and should demonstrate that the project meets applicable performance standards. The EIR should describe the status of each State permit in regards to its approval or pending approval, given the “after the fact” filing of the MEPA ENF. In accordance with section 11.01 (3)(a) of the MEPA regulations, the EIR should discuss the consistency of the project with any applicable local or regional land use plans. The EIR should also address the requirements of Executive Order 385 (Planning for Growth).

### Alternatives Analysis

The EIR must evaluate reasonable alternatives and methods to avoid or minimize potential environmental impacts, and provide the opportunity to assess environmental impacts and identify appropriate mitigation measures. As noted in the DEP comment letter, an alternatives analysis is required prior to issuance of the Water Quality Certification. The Alternatives Analysis should evaluate a No Build Alternative (for baseline purposes), the Preferred Alternative, and a Reduced Build Alternative. The Reduced Build Alternative should present a development scenario with a reduction in environmental impacts. As part of this Alternatives Analysis, the applicant must demonstrate how environmental impacts will be reduced under the Reduced Build Alternative in comparison to the Preferred Alternative, compatibility with stormwater management systems and wetlands, and feasibility of implementing the Reduced Build Alternative given the overall construction status of Scotland Heights I&II.

For each alternative, the EIR should quantify the amount of land altered and impervious areas created, the amount of stormwater conveyed, wastewater generation quantities, the amount of earthwork involved in meeting final grades, and other applicable areas of environmental impact. The EIR should investigate all feasible methods of avoiding, reducing or minimizing impacts to land. Additionally, an alternative plan for stormwater detention and wetlands replication under the Preferred Alternative and Reduced Build Alternative scenarios should be provided to demonstrate that the project meets 401 Water Quality Certification standards to avoid the discharge of dredged or fill material for the detention of stormwater.

### Land Alteration

Scotland Heights I and II will collectively alter approximately 48 acres of land and create 12 acres of impervious surfaces. Additionally, the ENF states that there are significant slopes within Scotland Heights II, ranging from 10 to 33%. A graphic depicting pre-development slopes and post-development slopes should be provided, including information regarding earth cut and fill estimates to accommodate the roadways, building lots and stormwater management

basins for each design alternative. The EIR should discuss measures implemented on-site to stabilize slopes and prevent erosion upon completion of construction. The EIR should discuss the need for slope easements on individual properties and the provision of retaining walls. The EIR should investigate all feasible methods of avoiding, reducing or minimizing impacts to land.

### Wetlands and Drainage

Generally, the EIR should address the specific comments made by DEP with regards to wetlands impact, water quality, and stormwater. These responses should include a narrative and supporting graphics, as necessary, presented at a reasonable scale. The requested supplemental information should be included within the EIR and compliance with DEP wetlands guidance documents should be provided (i.e. wetland replication, stormwater management, etc.).

The EIR should detail the existing and proposed conditions as they relate to wetland replication areas including: geology, soils, and hydrology. Test pit information, water budget inputs/outputs, and proposed soil imports (if any) must be included in the EIR to ensure the viability of the wetland replication areas.

The EIR should demonstrate that source controls, pollution prevention measures, erosion and sedimentation controls during construction, and the post-development drainage system for Phase I and Phase II are designed in compliance with the Massachusetts Stormwater Management Policy and standards for water quality and quantity impacts and with the city of Haverhill's Storm Water Program. Calculations, system design details and best management practices (BMP) should be provided to supplement that information included in the EENF to affirm compliance with policies and standards. This supplemental information should also address discrepancies or issues raised by the DEP within their comment letter pertaining to the overall drainage design and calculations. The EIR should discuss the opportunities to incorporate low impact development stormwater runoff controls into the project, specifically the potential use of integrated management practices (IMP) for quantitative and contaminant control of stormwater.

### Water Quality

The EIR should clarify the role of restrictive covenants to prevent further alteration of wetland resources. The EIR should summarize components of these covenants (allowed and restricted uses), which lots have recorded covenants (this should be shown graphically as well), and how these deed restrictions demonstrate compliance with the 401 Water Quality Certification regulations.

Since the detention basins on-site are being used for sediment capture during construction, the EIR should outline the re-construction process of these basins to accommodate stormwater flows. The EIR must contain a construction sequencing plan and detailed information describing the methods to be used to remove the sediment and reconstruct the detention basins and wetlands replication area. The EIR should address how slow progress of completed build out (i.e. several houses per year) or a significant delay in additional build out will affect the ability of the stormwater basins to effectively manage stormwater runoff from the existing developed lots and sediment from an active construction site.

### Wastewater

The EIR should provide calculations summarizing estimated wastewater generation flows for Scotland Heights I and II and a history pertaining to sewer connections within the City of Haverhill. The EIR should provide an update of the DEP sewer connection process associated with the project. The location of sewer and water mains should be depicted on existing and proposed conditions plans. The EIR should provide a detailed drawing of the sewer main connection to Bradley Avenue and its relationship to stormwater management basin (Pond 2) and the location of the sewer connection associated with Scotland Heights I and Hawkes Road. The EIR should discuss efforts to reduce wastewater generation and water use within the Scotland Heights I and II subdivisions.

### Construction Period Impacts

The EIR should include a discussion of construction phasing, evaluate potential impacts associated with construction activities, and propose feasible measures to avoid or eliminate these impacts. This construction sequencing should address lot/building construction, road construction and drainage basin construction. The proponent should implement measures to alleviate dust, noise, and odor nuisance conditions, which may occur during the construction activities. A pointed discussion of erosion and sedimentation controls on steep slopes should be presented in the EIR.

### Mitigation

The EIR should include a separate chapter on mitigation measures. It should include a Draft Section 61 Finding for all state permits that includes a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation, based on the construction phases of the project, should also be included.

### Response to Comments

The EIR should contain a copy of this Certificate and a copy of each comment received. The EIR should respond to the comments received, to the extent that the comments are within MEPA subject matter jurisdiction. The EIR should present additional narrative and/or technical analysis as necessary to respond to the concerns raised.

Circulation

The EIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to any state agencies from which the proponent will seek permits or approvals, to the list of "comments received" below, and to Haverhill officials. A copy of the EIR should be made available for review at the Haverhill Public Library.

July 28, 2006

Date

Stephen R. Pritchard

## Comments Received:

7/21/2006 Department of Environmental Protection - NERO

SRP/HSJ/hsj

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