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August 17, 2006

FINAL RECORD OF DECISION

PROJECT NAME : Beacon @ 495 and Proposed Retail Center
PROJECT MUNICIPALITY : Marlborough
PROJECT WATERSHED : Millham Brook to Assabet River
EOEA NUMBER : 13755
PROJECT PROPONENT : Northborough/Marlborough Land Realty Trust, an affiliated entity of The Gutierrez Company
DATE NOTICED IN MONITOR : June 7, 2006

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 this project and hereby **grant a Phase I Waiver** to allow commencement of the first phase of the project prior to completion of the Environmental Impact Report (EIR) for the entire project. A Draft Record of Decision (DROD) was published in the July 25, 2006 issue of the *Environmental Monitor* for a fourteen-day comment period. Several comment letters were received on the DROD (as listed at the end of this Certificate). A Certificate on a Notice of Project Change (NPC) for the project was issued on July 14, 2006 and a Certificate on the Environmental Notification Form (ENF) with a Scope for the Draft EIR (DEIR) was issued on May 17, 2006.

Project Description

The proposed project consists of a mixed-use development, including 675,000 square feet (sf) of office and retail space, two restaurants (12,000 sf), and associated infrastructure on a approximately 80-acre site. Impacts associated with the project at full build-out include approximately 40.5 acres of land alteration, 32.5 acres of impervious area and 4,576 sf of wetlands alteration. Water use is estimated at 68,560 gallons per day (gpd) and wastewater generation at 62,330 gpd. The proposed project involves construction of approximately 0.5 miles of new sewer and water mains. Traffic impacts associated with the project are estimated at 11,075 vehicle trips per day and the project includes construction of 3,271 parking spaces.

As discussed in the NPC, the overall project has not changed since the filing of the ENFs.

However, the proponent has submitted a NPC in order to request a Phase I Waiver for a portion of the project, as described in the Waiver Request section below.

Jurisdiction

The project is undergoing MEPA review and is subject to a mandatory EIR pursuant to Section 11.03 (1)(a)(2) of the MEPA regulations because it involves creation of 10 or more acres of impervious area, and pursuant to Section 11.03(6)(b)(a)(6) and (7) because it will result in generation of 3,000 or more new average daily trips (adt) and construction of 1,000 or more new parking spaces. The project is also undergoing MEPA review pursuant to Section 11.03(3)(b)(1) because it involves alteration of 25 or more acres of land, Section 11.03(3)(b)(c) because it may involve alteration of 1,000 sf or more of outstanding resource waters (ORW), and Section 11.0(5)(b)(3)(c) because it involves construction of ½ or more miles of sewer mains.

The project requires an Access Permit from the MassHighway Department (MHD) for access onto Route 20. Other permits required include a Sewer Connection/Extension Permit and a Water Supply Distribution System Modification Permit from the Department of Environmental Protection (DEP). The project requires an Order of Conditions from the City of Marlborough (and, on appeal only, a Superseding Order from DEP). The project may require pre-construction permits pursuant to DEP Air Quality Control Regulations. The project will require a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit from the US Environmental Protection Agency (EPA).

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required state permits with the potential to cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to transportation, air quality, wastewater, wetlands and water quality, water supply, land, stormwater and drainage.

Waiver Request

In the NPC filed on May 31, 2006, the proponent requested that I grant a Phase One Waiver for the project. The proposed Phase I includes 15,000 sf of retail space and a 6,000 sf restaurant on a 6.6-acre portion of the 80-acre site. Phase I is expected to generate 1,190 new vehicle trips on an average weekday and 1,350 vehicle trips on an average Saturday. Other impacts associated with the proposed Phase I include alteration of approximately 5 acres of land, which includes creation of 2.55 acres of new impervious area, and alteration of approximately 16,000 sf of the wetlands buffer zone. Phase I development will require approximately 8,000 gpd of water and generate approximately 7,730 gpd of wastewater.

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, the finding required under Section 11.11(1)(b) shall be based on a determination that: a) the potential environmental impacts of Phase I are insignificant; b) ample and unconstrained infrastructure and services exist to support Phase I; c) the project is severable, such that Phase I does not require the implementation of any other future phase 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 I will contain terms, such as a condition or restriction in a permit to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Based upon the information submitted by the proponent and after consultation with the relevant state agencies and review of comments received, I determine that:

1. The proposed Phase I exceeds the MEPA review threshold for traffic pursuant to 11.03(6)(b)(14) because it will generate 1,000 or more new average daily trips and involves construction of 150 or more new parking spaces. Phase I, when taken alone, does not trigger any mandatory EIR thresholds.
2. Traffic impacts associated with Phase I will be adequately mitigated. The proponent has committed to signal timing adjustments and pedestrian improvements at the Route 20/Landry Drive/Glen Street intersection and geometric improvements to prohibit right turns from the site driveway onto Glen Street. The proponent has also committed to Transportation Demand Management (TDM) measures to facilitate pedestrian connections to the street. The Executive Office of Transportation (EOT) is satisfied with the Phase I mitigation providing it is implemented prior to occupancy.

As a condition of the Phase I waiver, the proponent must:

- Implement Phase I mitigation prior to Phase I occupancy; and
- Implement other transportation alternatives, such as providing bicycle infrastructure and encouraging use of the Massachusetts Bay Transportation Authority bus serving Route 20.

3. The NPC included a Stormwater Management Report with detailed drainage calculations and indicates that the Phase I portion of the project will meet the standards of DEP's Stormwater Management Policy. Since the DROD was issued, I have received comments from the City of Marlborough, Office of the Mayor (dated 8/7/06 and 8/17/06) and others indicating problems with stormwater management and erosion controls at the site during an intense rainfall event on July 28, 2006. The proponent should ensure that appropriate measures are in place to avoid such occurrences in the future, and to avoid adverse impacts to Millham Brook and the City's drainage system. As further detailed in the August 17, 2006 comment letter from the City, the proponent has agreed to additional mitigation measures to ensure compliance with the Soil Management Plan (SMP) and improve stormwater and erosion controls.
4. The NPC provided summary information on proposed erosion control measures but did not address detailed control measures as noted by DEP in its comment letter. Since the filing of the NPC, the proponent provided additional information on proposed erosion control measures in consultation with DEP, to demonstrate that adequate erosion control measures will be implemented. However, as noted above, comments received on the DROD identify deficiencies in erosion control measures during a recent storm event. The proponent should work closely with the City to address its concerns and to ensure that effective erosion controls are in place.
5. The NPC included a Soil Management Plan (SMP) which is being implemented with the oversight of two Licensed Site Professionals (one LSP for the developer and one for the City). The SMP addresses excavation, stockpiling and encapsulation of soils, air-monitoring, and a documented end point similar to a Chapter 21E/Massachusetts Contingency Plan (MCP) endpoint. The SMP also includes a post grading assessment report that will be provided to the City for its review and records.

Commenters have raised concerns regarding the adequacy of SMP implementation and potential impacts to public water supplies. In a letter dated August 11, 2006, the proponent committed to fund an LSP as a peer review for the City and to reimburse the City for water testing costs. The proponent has committed to continue working closely with the City on the SMP and erosion control issues.

I acknowledge commenter concerns regarding erosion, discharge of untreated stormwater during recent storm events, and issues associated with disturbance of pesticide-contaminated soils. However, as further detailed in the City's comment letter (8/17/06), water test results seem to indicate that the arsenic detected recently in Millham Reservoir did not originate from the project site. In addition, the City intends to have its LSP perform daily site visits, beginning immediately and continuing through Phase I of the project, until the site has been paved and/or turf established in landscaped areas.

As a condition of this waiver, in order to further enhance the SMP and avoid and minimize environmental impacts associated with the project:

- Stormwater management protocols for construction, to avoid problems associated with overtopping of the system, must be incorporated into the SMP;
- A protocol for testing material leaving the site (such as stump grindings), and to outline requirements for manifests when needed to transport this material off-site, must be incorporated into the SMP; and
- The proponent should ensure effective implementation of the SMP, Construction Sequencing Plan, stormwater management and erosion controls. The proponent should work closely with the contractors to ensure compliance with the SMP, including grading, erosion and dust control and corrective measures as needed, as further detailed in the City's comment letter dated August 17, 2006.

I concur with the City of Marlborough that it is important to ensure that future property owners/managers, site workers, and others have access to information regarding the SMP and the presence of pesticide residues in soil. Therefore, as a condition of this waiver:

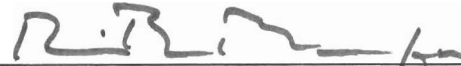
- The proponent must file a document (similar to a Response Action Outcome required for sites regulated under the MCP) with the registry of deeds indicating that the post grading assessment and post-construction Health and Safety Plan have been completed, and where they may be found.
6. Phase I is severable. Implementation of Phase I does not require the implementation of any future phase of development and will not restrict the means by which other potential environmental impacts may be avoided, minimized and mitigated. Phase I will result in alteration of approximately 6.6 acres of the 80-acre site. An alternatives analysis for the remainder of the project site will be included in the EIR providing opportunities to consider alternative levels of development and site configurations, and other measures to avoid and minimize, or mitigate environmental impacts from any other project phase.
 7. Ample and unconstrained infrastructure facilities and services exist to support Phase I. The EOT has supported the Phase I waiver on condition that traffic mitigation is implemented as outlined in item #1 above. Phase I of the project will rely on municipal water and sewer services and, as noted in the City's comment letter (7/7/06), the proponent must submit a request for sewer and water needs for the retail portion of the site. The City does not object to the Phase I Waiver on condition that the SMP and other control measures are implemented as further detailed in its comment letter (8/17/06).
 8. The proponent must submit a Draft EIR in accordance with the Scope in the Certificate on the ENF.

The proponent should work closely with the City to address its concerns regarding stormwater management and erosion controls. I ask that the proponent also consult with the City of Marlborough regarding its comments on traffic impacts and mitigation. I encourage the proponent to provide additional clarification, as needed, to demonstrate how the proposed mitigation will ensure that the Route 20/Glen Street/Landry Drive intersection will operate at levels consistent with the 2006 no-build conditions as indicated in the NPC. I remind those state agencies that will be issuing any permits for Phase I of the project to provide copies of their Section 61 Findings to the MEPA Office for the project file.

Providing the conditions of this waiver are met, I am satisfied that Phase I of this project will be implemented in a manner that avoids, minimizes and mitigates impacts to the maximum extent feasible such that the potential environmental impacts of Phase I are insignificant. I am also satisfied that Agency Action will contain terms, such as conditions or restrictions in a permit, that ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of Phase II of the project. Based on these findings, I determine that the waiver request has merit and meets the tests established in Section 11.11. Therefore, I grant the Phase I Waiver requested for this project.

August 17, 2006

DATE



Robert W. Golledge, Jr., Secretary

Comments received

8/07/06	City of Marlborough, Office of the Mayor
8/08/06	City Councilor Scott D. Schafer
8/08/06	Ron Bucchino (letter and resident's petition)
8/14/06	The Guttierrez Company
8/15/06	Service Employees International Union, Local 615
8/17/06	City of Marlborough, Office of the Mayor

13755 Final ROD

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